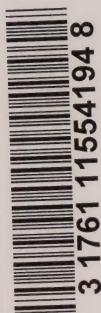


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Legislative Proposals, Explanatory Notes and Draft Regulations Relating to a New Framework for the Taxation of Spirits, Wine and Tobacco Products

Published by
The Honourable Paul Martin, P.C., M.P.
Minister of Finance
and
The Honourable Herb Dhaliwal, P.C., M.P.
Minister of National Revenue

April 1999



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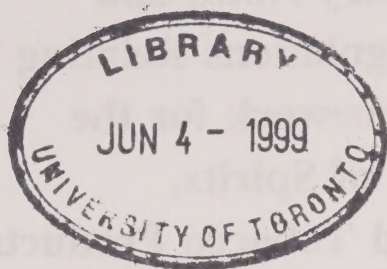


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Legislative Proposals

Published by
The Honourable Paul Martin, P.C., M.P.
Minister of Finance

SUMMARY

This enactment introduces a modern framework for the taxation of spirits, wine, and tobacco. The key features of the enactment include the following:

- (a) the imposition of duty on spirits, wine, tobacco products and raw leaf tobacco;
- (b) licensing and registration requirements for persons carrying on activities in relation to goods subject to duty;
- (c) some limited exemptions for certain goods produced by individuals for their personal use;
- (d) the entry without the payment of duty of domestic and imported spirits, wine and tobacco products into excise warehouses and special excise warehouses;
- (e) controls on the possession of goods on which duty has not been paid;
- (f) modernized provisions concerning the use of spirits and wine for non-beverage purposes and the use of specially denatured spirits;
- (g) modernized administrative provisions, including new payment, assessment, and appeal provisions;
- (h) updated enforcement provisions, including new offence, penalty and collection provisions; and
- (i) related and consequential amendments to other statutes.

EXPLANATORY NOTES

The Explanatory Notes issued by the Minister of Finance provide a detailed explanation of this enactment.

**Legislative Proposals for a New Framework for
the Taxation of Spirits, Wine and Tobacco Products**

SHORT TITLE

Short title

1. This Act may be cited as the *Excise Act, 1999*.

INTERPRETATION

Definitions

2. The definitions in this section apply in this Act.

"account" 5
« *rendre compte* »

"account" means, in respect of alcohol, to account for the alcohol in the records of a person.

**"accredited
representative"** 10
« *représentant
accrédité* »

"accredited representative" means a person who is entitled to the tax exemptions specified in Article 34 of the Convention set out in Schedule I to the *Foreign Missions and International Organizations Act* or in Article 49 of the Convention set out in Schedule II to that Act. 15

"alcohol"
« *alcool* »

"alcohol" means spirits or wine. 20

"alcohol licensee"
« *titulaire de licence
d'alcool* »

"alcohol licensee" means a person who holds an alcohol licence issued under section 13. 25

"alcohol registrant"
 « *détenteur autorisé*
d'alcool »

"alcohol registrant" means a person who holds an alcohol registration issued under section 16.

5

"analyst"
 « *analyste* »

"analyst" means a person who is designated as an analyst under section 9.

"assessment"
 « *cotisation* »

10

"assessment" means an assessment under this Act and includes a reassessment.

"authorized person"
 « *personne*
autorisée »

15

"authorized person" means a person who

(a) in the case of section 191 or 236, is authorized by the Minister for the purposes of those sections or section 11; and

(b) in the case of section 192, is engaged or employed, or who was formerly engaged or employed, by or on behalf of Her Majesty to assist in carrying out the provisions of this Act.

"beer"
 « *bière* »

"beer" means beer or malt liquor as defined in section 4 of the *Excise Act*.

25

"black stock"
 « *produit non ciblé* »

"black stock" means manufactured tobacco that is

(a) stamped with a tobacco stamp; and

30

(b) not stamped or marked in accordance with any statute of a province to indicate that it is intended for retail sale in a particular province or in particular provinces.

**"black stock
cigarettes"**
« *cigarettes non
ciblées* »

"black stock cigarettes" means cigarettes that are black stock. 5

**"black stock
manufactured
tobacco"**
« *tabac fabriqué non
ciblé* »

10

"black stock manufactured tobacco" means black stock other than cigarettes and tobacco sticks.

**"bottle-your-own
premises"**
« *centre de
remplissage
libre-service* »

15

"bottle-your-own premises" means premises in which, in accordance with the laws of the province in which they are located, wine is supplied from a marked special container of wine for the purpose of being 20 packaged by a purchaser.

"bulk"
« *en vrac* »

"bulk", in respect of alcohol, means alcohol that is not packaged.

"cigar"
« *cigare* »

25

"cigar" includes

(a) a cigarillo or cheroot; and

(b) any roll or tubular construction intended for smoking that consists of a filler composed of pieces of natural or reconstituted 30 leaf tobacco, a binder of natural or reconstituted leaf tobacco in which the filler is wrapped and a wrapper of natural or reconstituted leaf tobacco.

"cigarette"« *cigarette* »

"cigarette" includes any roll or tubular construction intended for smoking, other than a cigar or a tobacco stick. If a cigarette exceeds 102 mm in length, each portion of 76 mm or less is considered to be a separate cigarette. 5

"container"« *contenant* »

"container", in respect of a tobacco product, means a wrapper, package, carton, box, crate or other container that contains the tobacco product. 10

"customs bonded carrier"« *transporteur
cautionné* »

"customs bonded carrier" means a carrier that is bonded under the *Customs Act*. 15

"customs bonded warehouse"« *entrepôt de
stockage* »

20

"customs bonded warehouse" means a place that is licensed as a bonded warehouse under the *Customs Tariff*.

"customs bonded warehouse licensee"« *exploitant agréé
d'entrepôt de
stockage* »

25

"customs bonded warehouse licensee" means a person licensed under the *Customs Tariff* to operate a bonded warehouse.

"denature"« *dénaturation* »

30

"denature", in respect of spirits, means to denature the spirits into denatured spirits or specially denatured spirits using prescribed denaturants in the prescribed manner.

"denatured spirits"

« *spiritueux
dénaturés* »

"denatured spirits" means any prescribed grade of denatured spirits made in accordance with the prescribed specification for that grade.

5

"Department"

« *ministère* »

"Department" means the Department of National Revenue.

"Deputy Minister"

« *sous-ministre* »

10

"Deputy Minister" means the Deputy Minister of National Revenue.

"duty"

« *droit* »

"duty" means the duty imposed by this Act and by section 21.1 or 21.2 of the *Customs Tariff* and, except in Parts 3 and 4, includes special duty.

15

"duty free shop"

« *boutique hors
taxes* »

"duty free shop" means a place that is licensed as a duty free shop under the *Customs Act*.

20

**"duty free shop
licensee"**

« *exploitant agréé de
boutique hors taxes* »

25

"duty free shop licensee" means a person licensed under the *Customs Act* to operate a duty free shop.

"duty-paid market"

« *marché des
marchandises
acquittées* »

30

"duty-paid market" means the market for goods in respect of which duty, other than special duty, is payable.

"duty-paid value"

« *valeur à l'acquitté* »

"duty-paid value" means

(a) in respect of imported cigars, the value of the cigars as it would be determined for the purpose of calculating an *ad valorem* duty on the cigars in accordance with the *Customs Act*, whether or not the cigars are subject to *ad valorem* duty, plus the amount of any duty imposed on the cigars by section 41 of this Act and section 20 of the *Customs Tariff*; and

(b) in respect of imported cigars that, when imported, are placed in containers or otherwise prepared for sale, the total of the value of the cigars as determined in accordance with paragraph (a) and the value similarly determined of the container in which they are contained.

"excise warehouse"

« *entrepôt d'accise* »

"excise warehouse" means the premises of an excise warehouse licensee that are specified by the Minister as the excise warehouse of the licensee.

"excise warehouse licensee"

« *exploitant agréé d'entrepôt d'accise* »

"excise warehouse licensee" means a person who holds an excise warehouse licence issued under section 18.

"export"

« *exportation* »

"export" means to export from Canada.

"ferment-on-premises facility"

« *vinerie libre-service* »

"ferment-on-premises facility" means premises of a ferment-on-premises registrant that are specified by the Minister as the registrant's ferment-on-premises facility.

**"ferment-on-
premises registrant"**
« *exploitant autorisé
de vinerie
libre-service* »

5

"ferment-on-premises registrant" means a person who holds a ferment-on-premises registration issued under section 14.

"fiscal month"
« *mois d'exercice* »

"fiscal month", in respect of a person, means the fiscal month selected by or deemed to have been selected for the person under section 140.

"Her Majesty"
« *Sa Majesté* »

"Her Majesty" means Her Majesty in right of Canada.

"import"
« *importation* »

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"import" means to import into Canada.

"Indian"
« *Indien* »

"Indian" means a person who is registered under the *Indian Act* as an Indian or who is entitled to be registered under that Act as an Indian.

"intoxicating liquor"
« *boisson enivrante* »

"intoxicating liquor" has the same meaning as in section 2 of the *Importation of Intoxicating Liquors Act*.

25

"judge"
« *juge* »

"judge", in respect of any matter, means a judge of a superior court having jurisdiction in the province in which the matter arises or a judge of the Federal Court.

30

"licensed tobacco dealer"

« *commerçant de tabac agréé* »

"licensed tobacco dealer" means a person who holds a tobacco dealer's licence issued under section 13. 5

"licensed user"

« *utilisateur agréé* »

"licensed user" means a person who holds a user's licence issued under section 13. 10

"manufacture"

« *fabrication* »

"manufacture", in respect of a tobacco product, includes any step in the preparation or working up of raw leaf tobacco or manufactured tobacco into the tobacco product. It includes packing, stemming, 15 reconstituting, converting or packaging the raw leaf tobacco or tobacco product.

"manufactured tobacco"

« *tabac fabriqué* »

"manufactured tobacco" means every article, other than a cigar or packaged raw leaf tobacco, that is manufactured in whole or in part from raw leaf tobacco by any process. 20

"manufacturer"

« *fabricant* »

"manufacturer" means, in respect of a tobacco product, a person who 25

(a) manufactures the tobacco product; or

(b) is deemed by section 23 to be a manufacturer of a tobacco product.

"mark"

« *marquer* »

"mark" means, in respect of 30

(a) a special container of spirits, to mark in the prescribed form and manner to indicate that the container is intended for delivery to, and use by, a registered user; and

(b) a special container of wine, to mark in the prescribed form and manner to indicate that the container is intended for delivery to, and use at, a bottle-your-own premises. 5

"Minister"

« *ministre* »

"Minister" means the Minister of National Revenue.

"month"

10

« *mois* »

"month" means a period beginning on a particular day in a calendar month and ending on

(a) the day immediately before the day in the next calendar month that has the same calendar number as the particular day; or 15

(b) if the next calendar month does not have a day that has the same calendar number as the particular day, the last day of that next calendar month.

"non-duty-paid"

« *non acquitté* »

20

"non-duty-paid" in respect of packaged alcohol means that duty, other than special duty, has not been paid on the alcohol.

"officer"

« *préposé* »

"officer" means a person who is appointed or employed in the administration or enforcement of this Act or a member of the Royal Canadian Mounted Police. It includes a person who has the powers and duties of an officer under subsection 8(2) for the purposes of a provision of this Act that is specified in a designation made under subsection 8(1). 25 30

"packaged"

« *emballé* »

"packaged", in respect of

(a) raw leaf tobacco or a tobacco product, means packaged in a prescribed package; or

(b) alcohol, means packaged in

(i) a container that is ordinarily sold to consumers without the alcohol being repackaged and that

(A) in respect of spirits, is of a capacity of not more than 25 L, or

(B) in respect of wine, is of a capacity of not more than 50 L, or

(ii) a marked special container.

"person"

« *personne* »

"person" means an individual, a partnership, a corporation, a trust, an estate or a body that is a society, a union, a club, an association, a commission or another organization of any kind.

"personal use"

« *usage personnel* »

"personal use", in relation to the use of a good by an individual, means the use of the good by the individual or by others at the individual's expense. It does not include the sale or other commercial use of the good.

"prescribed"

version anglaise
seulement

"prescribed" means

(a) in the case of a form or the manner of filing a form, authorized by the Minister;

(b) in the case of the information to be given on a form, specified by the Minister; and

(c) in any other case, prescribed by regulation or determined in accordance with rules prescribed by regulation.

"produce"

« *production* »

"produce", in respect of wine, means to produce wine by the fermentation of an agricultural product.

"provincial liquor authority"

5

« *administration*

provinciale des

alcools »

"provincial liquor authority" means a government board, commission or 10 agency that is authorized by the laws of a province to sell intoxicating liquor.

"raw leaf tobacco"

« *tabac en feuilles* »

"raw leaf tobacco" means unmanufactured tobacco or the leaves and 15 stems of the tobacco plant.

"record"

« *registre* »

"record" includes any book, account, statement, voucher, invoice, letter, telegram, agreement, memorandum or other document, whether 20 recorded in writing or in some other manner and whether or not some process must be applied to it to make it readily intelligible.

"registered user"

« *utilisateur*

autorisé »

25

"registered user" means a person who holds a user's registration issued under section 15.

"reserve"

« *réserve* »

"reserve" has the same meaning as in subsection 2(1) of the *Indian Act*. 30

"responsible"

« *responsable* »

"responsible", in relation to a person in respect of bulk alcohol, means the person who in accordance with sections 100 to 107 is responsible for the alcohol and liable under this Act to pay duty on the alcohol. 35

"sale price"**« *prix de vente* »**

"sale price", in respect of cigars, means the total of

(a) the amount charged as price for the cigars before an amount payable in respect of a tax under the *Excise Tax Act* is added; 5

(b) the amount charged as price for or in respect of the container in which the cigars are contained;

(c) any amount that the purchaser is liable to pay to the vendor by reason of or in respect of the sale of the cigars in addition to the amount charged as price, whether payable at the same or any other time, including, without limiting the generality of the foregoing, any amount charged for or to make provision for advertising, financing, commission or any other matter; and 10

(d) the amount of duty imposed on the cigars by section 41.

"SDS registrant"

15

**« *détenteur autorisé
de spiritueux
spécialement
dénaturés* »**

"SDS registrant" means a person who holds a specially denatured spirits registration issued under section 17. 20

"special container"**« *contenant spécial* »**

"special container" means,

(a) in respect of spirits, a container of a capacity of more than 25 L but not more than 250 L; and 25

(b) in respect of wine, a container of a capacity of more than 50 L but not more than 2,000 L.

"special duty"**« *droit spécial* »**

30

"special duty" means

(a) in respect of a tobacco product that is exported by a tobacco licensee, the duty imposed by section 50; and

(b) in respect of imported spirits delivered to or imported by a licensed user, the duty imposed by section 118.

**"special excise
warehouse"**

« *entrepôt d'accise
spécial* »

5

"special excise warehouse" means the premises of a special excise warehouse licensee that are specified by the Minister as the special excise warehouse of the licensee.

**"special excise
warehouse licensee"**

« *exploitant agréé
d'entrepôt d'accise
spécial* »

10

"special excise warehouse licensee" means a person who holds a special excise warehouse licence issued under section 19.

**"specially denatured
spirits"**

« *spiritueux
spécialement
dénaturés* »

20

"specially denatured spirits" means any prescribed grade of specially denatured spirits made in accordance with the prescribed specification for that grade.

"specified premises"

« *local déterminé* »

25

"specified premises", in respect of a licensed user, means the premises of the licensed user that are specified by the Minister under subsection 21(3).

"spirits"

« *spiritueux* »

30

"spirits" means any material or substance, whether in liquid or any other form, that contains any proportion by mass or by volume of absolute ethyl alcohol (C_2H_5OH). It does not include wine, beer, denatured spirits or specially denatured spirits.

35

"stamped"**« estampillé »**

"stamped", in respect of anything that is required by this Act to be stamped with a tobacco stamp, means that the tobacco stamp is, in the prescribed manner, stamped, impressed, printed or marked on, or indented into or affixed to, the thing. 5

"sufferance**warehouse"****« entrepôt d'attente »**

"sufferance warehouse" has the same meaning as in subsection 2(1) of the *Customs Act*. 10

"sufferance**warehouse licensee"****« exploitant agréé****d'entrepôt d'attente »**

15

"sufferance warehouse licensee" means a person licensed under the *Customs Act* to operate a sufferance warehouse.

"take for use"**« utilisation pour****soi »**

20

"take for use" in respect of alcohol, means to take alcohol for a use other than

(a) a use described in section 116 or 128 or subsection 129(1); or

(b) in the case of bulk alcohol, any treatment or packaging of it by an alcohol licensee. 25

"Tax Court"**« Cour de l'impôt »**

"Tax Court" means the Tax Court of Canada.

"tobacco dealer"**« commerçant de****tabac »**

30

"tobacco dealer" means a person, other than a tobacco licensee, who

(a) purchases for resale, sells or offers to sell raw leaf tobacco on which duty is not imposed under this Act; and

(b) does not take physical possession of the tobacco.

"tobacco licensee"

« *titulaire de licence
de tabac* »

"tobacco licensee" means a person who holds a tobacco licence issued 5
under section 13.

"tobacco marking"

« *mention
obligatoire* »

"tobacco marking" means prescribed information that is required by this 10
Act to be printed on or affixed to a container of tobacco products that
is not required by this Act to be stamped with a tobacco stamp.

"tobacco product"

« *produit du tabac* »

"tobacco product" means manufactured tobacco, packaged raw leaf 15
tobacco or cigars.

"tobacco stamp"

« *estampille de
tabac* »

"tobacco stamp" means prescribed information in a prescribed format of 20
a distinctive mark, label or seal required by this Act to be stamped on
a tobacco product, package of tobacco product, raw leaf tobacco or
a package of raw leaf tobacco intended for the duty-paid market, to
indicate that duty, other than special duty, has been paid on the
tobacco product or raw leaf tobacco. 25

"tobacco stick"

« *bâtonnets de
tabac* »

"tobacco stick" means any roll or tubular construction of tobacco
intended for smoking, other than a cigar, that requires further 30
preparation to be consumed. If a tobacco stick exceeds

(a) 90 mm in length, each portion of 60 mm or less, or

(b) 800 mg in weight, each portion of 650 mg or less,

is considered to be a separate stick.

"wine"

« *vin* »

"wine" means a beverage that is produced, without distillation, by the alcoholic fermentation of an agricultural product other than a grain. However, it includes sake.

5

Joint and several possession

3. (1) For the purposes of subsection 29(1), section 30, subsections 31(1), 69(1) and 85(1) and sections 211 and 212, if one of two or more persons, with the knowledge and consent of the rest of them, has anything in the person's possession, it is deemed to be in the custody and possession of each and all of them.

Definition of "possession"

(2) In this section and in subsections 29(1), 31(1), 69(1) and 85(1), "possession" means not only having in one's own personal possession, but also knowingly

(a) having in the actual possession or custody of another person; or

(b) having in any place, whether belonging to or occupied by one's self or not, for one's own use or benefit or that of another person.

20

Arm's length

4. (1) For the purposes of this Act,

(a) related persons are deemed not to deal with each other at arm's length; and

(b) it is a question of fact whether persons not related to each other were, at any particular time, dealing with each other at arm's length.

25

Related persons

(2) For the purposes of this Act, persons are related to each other if they are related persons within the meaning of subsections 251(2) to (6) of the *Income Tax Act*, except that

30

(a) a reference in those subsections to "corporation" shall be read as a reference to "corporation or partnership"; and

(b) a reference in those subsections to "shares" or "shareholders" shall, in respect of a partnership, be read as a reference to "rights" or "partners", respectively.

PART 1

GENERAL

5

Application to Her Majesty

Act binding on Her Majesty

5. (1) This Act is binding on Her Majesty and Her Majesty in right of a province.

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Duties binding on Her Majesty

(2) All duties, interest and other amounts imposed by this Act are binding on Her Majesty or Her Majesty in right of a province in respect of goods manufactured, produced or imported by or on behalf of Her Majesty or Her Majesty in right of a province.

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Administration and Officers

Minister's duty

6. The Minister shall administer and enforce this Act and control and supervise all persons employed or engaged to carry out or enforce this Act.

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Officers and employees

7. (1) The officers, agents and employees that are necessary to administer and enforce this Act shall be appointed or employed in the manner authorized by law.

25

Delegation of powers

(2) The Minister may authorize a designated officer or agent or a class of officers or agents to exercise powers or perform duties of the Minister, including any judicial or quasi-judicial power or duty of the Minister, under this Act.

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Designation of police forces

8. (1) The Minister and the Solicitor General of Canada may

(a) designate any police force in Canada for the purposes of the enforcement of any of the provisions of this Act that are specified in the designation, subject to any terms and conditions specified in the designation, for any period specified in the designation; and 5

(b) at any time vary or cancel a designation made under paragraph (a).

Persons to have powers and duties of officers

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(2) All members of a police force designated under subsection (1) have the powers and duties of an officer for the purposes of the enforcement of the provisions of this Act specified in the designation. 15

Designation to be published

(3) A designation under subsection (1) or any variation or cancellation of that designation must be published in the *Canada Gazette* and is not effective before it is so published. 20

Designation of analysts

9. The Minister may designate any person or class of persons as an analyst for the purposes of this Act.

Administration of oaths

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10. Any officer, if designated by the Minister for the purpose, may administer oaths and take and receive affidavits, declarations and affirmations for the purposes of or incidental to the administration or enforcement of this Act or the regulations, and every officer so designated has for those purposes all the powers of a commissioner for administering oaths or taking affidavits. 30

Inquiries

Authorization of inquiry

11. (1) The Minister may, for any purpose related to the administration or enforcement of this Act, authorize any person, whether 5 or not the person is an officer, to make any inquiry that the Minister considers necessary with reference to anything relating to the administration or enforcement of this Act.

Appointment of hearing officer

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(2) If the Minister authorizes a person to make an inquiry, the Minister shall without delay apply to the Tax Court for an order appointing a hearing officer before whom the inquiry will be held.

Powers of hearing officer

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(3) For the purposes of an inquiry, a hearing officer has all the powers conferred on a commissioner by sections 4 and 5 of the *Inquiries Act* and that may be conferred on a commissioner under section 11 of that Act.

When powers to be exercised

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(4) A hearing officer shall exercise the powers conferred on a commissioner by section 4 of the *Inquiries Act* in relation to any person that the person authorized to make the inquiry considers appropriate for the conduct of the inquiry, but the hearing officer shall not exercise the 25 power to punish any person unless, on application by the hearing officer, a judge or a judge of a county court certifies that the power may be exercised in the matter disclosed in the application and the applicant has given to the person in respect of whom the power is proposed to be exercised 24 hours notice of the hearing of the application, or any 30 shorter notice that the judge considers reasonable.

Rights of witnesses

(5) Any person who gives evidence in an inquiry is entitled to be represented by counsel and, on request made by the person to the Minister, to receive a transcript of that evidence. 35

Rights of person investigated

(6) Any person whose affairs are investigated in the course of an inquiry is entitled to be present and to be represented by counsel throughout the inquiry unless the hearing officer, on application by the Minister or a person giving evidence, orders otherwise in relation to the whole or any part of the inquiry, on the ground that the presence of the person and their counsel, or either of them, would be prejudicial to the effective conduct of the inquiry. 5

Interest

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Compounding

12. Interest computed at a prescribed rate under any provision of this Act shall be compounded daily.

PART 2

LICENCES AND REGISTRATIONS

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Licences

Issuance

13. Subject to the regulations, on application, the Minister may issue to a person

(a) an alcohol licence, authorizing the person to produce, package or denature spirits or produce or package wine; 20

(b) a user's licence, authorizing the person to use bulk alcohol or non-duty-paid packaged alcohol;

(c) a tobacco licence, authorizing the person to manufacture tobacco products; or 25

(d) a tobacco dealer's licence, authorizing the person to carry on the activity of a tobacco dealer.

Registrations

Ferment-on-premises registration

14. Subject to the regulations, on application, the Minister may issue a ferment-on-premises registration to a person authorizing the person to possess at their ferment-on-premises facility bulk wine produced at the premises by an individual and owned by the individual. 5

User's registration

15. Subject to the regulations, on application, the Minister may issue a user's registration authorizing the use of non-duty-paid packaged spirits by 10

(a) a scientific and research laboratory in receipt annually of aid from the Government of Canada or a province, for scientific purposes;

(b) a university or other post-secondary educational institution recognized by a province, for scientific purposes; 15

(c) a health care facility, for medicinal purposes; or

(d) a health institution in receipt annually of aid from the Government of Canada or a province, for medicinal and research purposes.

Alcohol registration

16. Subject to the regulations, on application, the Minister may issue an alcohol registration to a person authorizing the person to store or transport bulk alcohol or specially denatured spirits. 20

SDS registration

17. Subject to the regulations, on application, the Minister may issue a specially denatured spirits registration (in this Act referred to as an SDS registration) to a person authorizing the person to possess and use specially denatured spirits. 25

Excise Warehouses

Issuance of licence

18. (1) Subject to the regulations, on application, the Minister may issue an excise warehouse licence to a person referred to in subsection (2) authorizing the person to possess in their excise 30

warehouse non-duty-paid packaged alcohol or a tobacco product that is not stamped with a tobacco stamp.

Eligible persons

(2) An excise warehouse licence may be issued to

(a) an alcohol licensee;

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(b) a provincial liquor authority;

(c) a tobacco licensee;

(d) any person who supplies goods in accordance with the *Ships' Stores Regulations*; or

(e) any other person who is not a retailer of alcohol.

10

Special Excise Warehouses

Issuance of licence

19. (1) Subject to the regulations, on application, the Minister may issue a special excise warehouse licence to a person who is authorized by a tobacco licensee to be the only person, other than the licensee, who is entitled to distribute to an accredited representative a tobacco product manufactured by the licensee.

15

Designation of premises

(2) The Minister shall not specify more than one premises of a special excise warehouse licensee as a special excise warehouse.

20

Return of tobacco products

20. (1) If a person ceases to be authorized by a tobacco licensee to distribute to an accredited representative a tobacco product manufactured by the tobacco licensee,

25

(a) the person shall immediately return the tobacco product of that licensee that is stored in the person's special excise warehouse to the excise warehouse of the tobacco licensee; and

(b) the tobacco licensee shall immediately notify the Minister in writing that the person has ceased to be so authorized.

30

Cancellation

(2) The Minister shall cancel the special excise warehouse licence of the person if the person is no longer authorized by any tobacco licensee to distribute to an accredited representative a tobacco product.

General

5

Refusal to issue licence or registration

21. (1) The Minister may, for any reason the Minister considers sufficient in the public interest, refuse to issue a licence or registration. 10

Amendment or renewal

(2) The Minister may, subject to the regulations, amend, suspend, renew, cancel or reinstate any licence or registration.

Conditions imposed by Minister

15

(3) The Minister may, on issuing a licence or registration or at any later time,

(a) specify the activities that may be carried on under the licence or registration and the premises where those activities may be carried on; and 20

(b) impose any other conditions that the Minister considers appropriate with respect to the carrying on of activities under the licence or registration.

Compliance with Act and regulations

25

22. A licensee or registrant shall not carry on any activity under their licence or registration otherwise than in accordance with this Act and the regulations.

PART 3

TOBACCO

Regulation of Tobacco

**Deemed
manufacturer**

5

23. A person who, whether for consideration or otherwise, provides or offers to provide in their place of business equipment for use in that place by another person in the manufacture of a tobacco product is deemed

(a) for the purposes of this Act, to be a manufacturer; and 10

(b) for the purposes of paragraphs 41(a) and 42(a) to be the manufacturer of any tobacco product that is manufactured in that place by that other person.

**Tobacco
manufacturing**

15

24. (1) No person shall, other than in accordance with a tobacco licence,

(a) manufacture a tobacco product; or

(b) whether for consideration or otherwise, provide or offer to provide in the person's place of business equipment for use in that place by another person in the manufacture of a tobacco product.

**Exception –
manufacturing for
private use**

(2) An individual who is not a tobacco licensee may manufacture a 25 tobacco product

(a) from tobacco on which the duty has been paid, for their personal use; or

(b) from raw leaf tobacco grown on land on which the individual resides, if 30

(i) the product is for their personal use or that of the adult members of their family who reside with the individual, and

(ii) the quantity of product manufactured in any year does not exceed 15 kg for the individual and each adult member of the individual's family that resides with the individual.

Tobacco dealer

25. Subject to section 30, no person shall carry on the activity of a tobacco dealer except in accordance with a tobacco dealer's licence or a tobacco licence. 5

Unlawful packaging or stamping

26. No person shall package or stamp with a tobacco stamp any tobacco product or raw leaf tobacco unless the person 10

(a) is a tobacco licensee; or

(b) is the importer or owner of the product or tobacco and it has been placed in a sufferance warehouse for the purpose of being stamped.

Unlawful removal

15

27. (1) No person shall remove raw leaf tobacco intended for the duty-paid market or a tobacco product from the premises of a manufacturer unless

(a) the raw leaf tobacco or tobacco product is packaged;

(b) if the tobacco product is intended for the duty-paid market, the package, and in prescribed circumstances the tobacco product, is stamped with a tobacco stamp; and 20

(c) if the tobacco product is not intended for the duty-paid market, tobacco markings are printed on or affixed to the container of the tobacco product. 25

Exception

(2) Subsection (1) does not apply to a tobacco licensee who removes partially manufactured tobacco from their premises.

**Definition of
"partially
manufactured
tobacco"**

(3) In this section, "partially manufactured tobacco" means raw leaf tobacco that has been manufactured less fully than cut filler or cut rag. 5

**Prohibition – certain
tobacco products for
sale, etc.**

28. No person shall purchase for resale or receive for sale 10

(a) a tobacco product from a manufacturer who is not a tobacco licensee;

(b) a tobacco product unless, subject to this Act, it is packaged and stamped with a tobacco stamp as required by this Act; or

(c) a package or a tobacco product that is fraudulently stamped with 15
a tobacco stamp.

**Selling, etc.,
unstamped raw leaf
tobacco**

29. (1) Subject to section 30, no person shall dispose of, sell, offer for 20
sale, purchase or have in their possession raw leaf tobacco unless

(a) the person is a tobacco licensee; or

(b) the raw leaf tobacco is packaged and stamped with a tobacco stamp.

Exception

25

(2) Subsection (1) does not apply to

(a) the possession of raw leaf tobacco in a customs bonded warehouse or a sufferance warehouse by the licensee of that warehouse; or

(b) the sale, offer for sale or purchase of raw leaf tobacco by a 30
licensed tobacco dealer.

Exceptions to sections 25 and 29

30. A tobacco grower does not commit an offence under section 25 or 29 by reason only that the grower deals in or has in possession

(a) raw leaf tobacco grown by the grower on their property for sale or other disposal to a tobacco licensee or a licensed tobacco dealer if the tobacco is either on the grower's property or is being transported by the grower 5

(i) for the purpose of curing referred to in paragraph (b),

(ii) after curing referred to in that paragraph, or 10

(iii) for delivery to or return by a tobacco licensee; or

(b) raw leaf tobacco grown by any other person, if the tobacco grower, in whose possession it is, operates a tobacco drying kiln on the grower's property and the grower's possession is solely for the purpose of curing the tobacco and returning it to the other person immediately after completion of the curing process. 15

Unlawful possession or sale of tobacco products

31. (1) No person shall sell, offer for sale or have in their possession a tobacco product unless it is stamped with a tobacco stamp. 20

Exceptions – possession

(2) Subsection (1) does not apply to the possession of a tobacco product by 25

(a) a tobacco licensee at the place of manufacture of the product or at the excise warehouse of the licensee;

(b) in the case of an imported tobacco product, an excise warehouse licensee at the excise warehouse of the licensee;

(c) a special excise warehouse licensee at the special excise warehouse of the licensee; 30

(d) a prescribed person who is transporting the product under prescribed circumstances and conditions;

- (e) a customs bonded warehouse licensee, sufferance warehouse licensee or duty free shop licensee in their warehouse or duty free shop;
- (f) an accredited representative for their personal or official use;
- (g) a person as ships' stores if the acquisition and possession of the product by that person are in accordance with the *Ships' Stores Regulations*; 5
- (h) an individual who has imported the product for their personal use in quantities not in excess of prescribed quantities; or
- (i) an individual who has manufactured the product in accordance with subsection 24(2). 10

Exceptions – sale

(3) Subsection (1) does not apply to the sale or offer for sale of a tobacco product by

- (a) a tobacco licensee 15
 - (i) to a special excise warehouse licensee for sale or offer for sale to an accredited representative,
 - (ii) to an accredited representative for their personal or official use,
 - (iii) to an excise warehouse licensee for sale or offer for sale as ships' stores in accordance with the *Ships' Stores Regulations*, 20
 - (iv) for export in accordance with this Act,
 - (v) to a duty free shop for sale or offer for sale in accordance with the *Customs Act*, or
 - (vi) as ships' stores in accordance with the *Ships' Stores Regulations*; 25
- (b) a special excise warehouse licensee to an accredited representative for their personal or official use;
- (c) an excise warehouse licensee if the product
 - (i) is sold or offered for sale as ships' stores in accordance with the *Ships' Stores Regulations*, or 30

(ii) was imported and is sold or offered for sale for export, to an accredited representative for their personal or official use or to a duty free shop for sale or offer for sale in accordance with the *Customs Act*;

(d) a duty free shop if the sale or offer for sale is in accordance with the *Customs Act*; 5

(e) in the case of an imported tobacco product, a customs bonded warehouse licensee, if the product was sold or offered for sale

(i) to an accredited representative for their personal or official use,

(ii) to a duty free shop for sale or offer for sale in accordance with the *Customs Act*, 10

(iii) as ship' stores in accordance with the *Ships' Stores Regulations*, or

(iv) for export in accordance with this Act; and

(f) a person as ships' stores in accordance with the *Ships' Stores Regulations*. 15

**No sale or
distribution except
in original package**

32. No person shall, whether or not the duty imposed by this Act has been paid on a tobacco product, 20

(a) sell or offer for sale cigars otherwise than in or from the original package stamped with a tobacco stamp;

(b) sell or offer for sale manufactured tobacco otherwise than in the original package stamped with a tobacco stamp; or 25

(c) distribute free of charge for advertising purposes any tobacco product otherwise than in or from the original package stamped with a tobacco stamp.

**Packaging and
stamping of tobacco**

30

33. A tobacco licensee who manufactures a tobacco product shall not enter the tobacco product into the duty-paid market unless

(a) the product has been packaged by the licensee;

(b) the package has printed on it prescribed information; and

(c) the package, and in prescribed circumstances the product, is stamped at the time of packaging with a tobacco stamp.

**Packaging and
stamping of
imported tobacco**

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34. (1) If a tobacco product or raw leaf tobacco is imported, it must, before it is released under the *Customs Act* for entry into the duty-paid market,

(a) be packaged in a package that is stamped with a tobacco stamp 10
and has printed on it prescribed information; and

(b) in prescribed circumstances, be stamped with a tobacco stamp.

**Exception for
certain importations**

(2) Subsection (1) does not apply to

15

(a) manufactured tobacco that is imported by a tobacco licensee for further manufacturing by the licensee;

(b) a tobacco product that is imported by an individual for their personal use in quantities not in excess of prescribed quantities; or

(c) raw leaf tobacco that is imported by a tobacco licensee.

20

**Absence of stamps –
notice**

35. The absence of the tobacco stamp required by this Act to be stamped on any tobacco product, raw leaf tobacco or package containing a tobacco product or raw leaf tobacco that is sold, kept for sale or found 25
in the possession of a person is notice to all persons that the duty on the tobacco product or raw leaf tobacco has not been paid.

**Unstamped products
to be warehoused**

36. If a packaged tobacco product is not stamped by a tobacco 30
licensee with a tobacco stamp as required by this Act, the tobacco licensee shall immediately enter the product into the licensee's excise warehouse.

Marking

37. (1) No person shall enter into an excise warehouse a container of tobacco products unless the container has printed on it or affixed to it tobacco markings and any other prescribed information.

Marking – imported products

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(2) No person shall deliver a container of imported tobacco products that does not have printed on it or affixed to it tobacco markings and other prescribed information to

(a) a duty free shop for sale or offer for sale in accordance with the *Customs Act*; 10

(b) an accredited representative; or

(c) a customs bonded warehouse.

Exception for prescribed tobacco product

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(3) Subsections (1) and (2) do not apply to a tobacco product of a particular brand if the brand is not commonly sold in Canada and is prescribed in the regulations made for the purposes of this subsection.

Exception for prescribed cigarettes

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(4) Subsection (1) does not apply to cigarettes of a particular type or formulation, manufactured in Canada and exported under a brand that is also applied to cigarettes of a different type or formulation that are manufactured and sold in Canada, if 25

(a) cigarettes of the particular type or formulation exported under that brand are prescribed cigarettes; and

(b) cigarettes of the particular type or formulation have never been sold in Canada by the manufacturer under that brand or any other brand. 30

Distinguishing different cigarettes

(5) For the purpose of subsection (4), a cigarette of a particular type or formulation sold under a brand may be considered to be different

from another cigarette sold under that brand if it is reasonable to consider them to be different having regard to their physical characteristics before and during consumption.

Non-compliant imports

5

38. If an imported tobacco product or imported raw leaf tobacco intended for the duty-paid market is not stamped with a tobacco stamp as required under this Act when it is reported under the *Customs Act*, it shall be placed in a sufferance warehouse for the purpose of being stamped.

10

Removal of raw leaf tobacco or waste tobacco

39. (1) No person other than a tobacco licensee shall remove raw leaf tobacco or tobacco that is waste from the premises of the licensee.

15

Removal requirements

(2) If raw leaf tobacco or tobacco that is waste is removed from the premises of a tobacco licensee, the licensee shall deal with the tobacco in the manner authorized by the Minister.

20

Re-working or destruction of tobacco

40. (1) A tobacco licensee may re-work or destroy a tobacco product in the manner authorized by the Minister.

25

Importation for destruction

(2) The Minister may authorize a tobacco licensee to import any tobacco product manufactured by the licensee in Canada for re-working or destruction by the licensee in accordance with subsection (1).

30

Duty on Tobacco

Imposition

41. Duty is imposed on tobacco products manufactured in Canada or imported and on imported raw leaf tobacco at the rates set out in Schedule 1 and is payable

35

(a) in the case of tobacco products manufactured in Canada, by the manufacturer of the tobacco products at the time they are packaged; and

(b) in the case of imported tobacco products or raw leaf tobacco, by the importer, owner or other person who is liable under the *Customs Act* to pay duty under section 20 of the *Customs Tariff* or who would be liable to pay that duty on the tobacco or products if they were subject to that duty. 5

Additional duty on cigars

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42. In addition to the duty imposed by section 41, duty is imposed on cigars at the rates set out in Schedule 2 and is payable

(a) in the case of cigars manufactured and sold in Canada, by the manufacturer at the time of delivery of the cigars to a purchaser; and

(b) in the case of imported cigars, by the importer, owner or other person who is liable under the *Customs Act* to pay duty under section 20 of the *Customs Tariff* or who would be liable to pay that duty on the cigars if they were subject to that duty. 15

Application of *Customs Act*

20

43. The duty imposed by sections 41 and 42 on imported raw leaf tobacco and tobacco products shall be paid and collected under the *Customs Act*, and interest and penalties shall be imposed, calculated, paid and collected under that Act, as if the duty were a duty levied by section 20 of the *Customs Tariff*, and, for those purposes, the *Customs Act* applies with any modifications that the circumstances require. 25

Duty not payable

44. (1) The duty imposed by sections 41 and 42 is not payable on a tobacco product that is

(a) entered into an excise warehouse in accordance with this Act and the regulations; 30

(b) imported by an accredited representative for their personal or official use;

(c) imported and entered into a customs bonded warehouse in accordance with the *Customs Tariff* and the regulations made under that Act; 35

(d) imported for use as ships' stores in accordance with the *Ships' Stores Regulations*;

(e) imported by a duty free shop licensee for sale or offer for sale in accordance with the *Customs Act*;

(f) imported by a tobacco licensee, if it was manufactured in Canada by the licensee and is imported for re-working or destruction under subsection 40(2); or

(g) manufactured and disposed of by an individual in accordance with subsection 24(2).

**Duty not payable –
manufactured
tobacco**

10

(2) The duty imposed by section 41 is not payable on raw leaf tobacco or manufactured tobacco that is imported by a tobacco licensee for further manufacturing by the licensee.

15

Excise Warehouses

**Restriction –
entering tobacco**

45. No person shall enter into an excise warehouse

(a) a tobacco product that is stamped with a tobacco stamp; or

20

(b) any other tobacco product except in accordance with this Act and the regulations.

**Removal of domestic
products**

46. (1) No person shall remove from an excise warehouse or a special excise warehouse a tobacco product manufactured in Canada.

25

Exception

(2) Subject to the regulations, a tobacco product manufactured in Canada may be removed from the excise warehouse of the tobacco licensee who manufactured the product

30

(a) for delivery to an accredited representative for their personal or official use;

(b) for delivery as ships' stores in accordance with the *Ships' Stores Regulations*;

(c) for delivery to another excise warehouse, if the excise warehouse licensee of the other excise warehouse certifies in the prescribed form to the tobacco licensee that the product is for delivery as ships' stores in accordance with the *Ships' Stores Regulations*; 5

(d) for delivery to a duty free shop for sale or offer for sale in accordance with the *Customs Act*;

(e) for export by the licensee in accordance with this Act; or

(f) for delivery to the special excise warehouse of the person who is authorized by the licensee to be the only person, other than the licensee, who is entitled to distribute the licensee's tobacco products to an accredited representative. 10

Removal from other warehouse – ships' stores

15

(3) Subject to the regulations, a tobacco product manufactured in Canada may be removed from an excise warehouse referred to in paragraph (2)(c) for delivery as ships' stores in accordance with the *Ships' Stores Regulations*. 20

Removal from special excise warehouse – accredited representatives

25

(4) Subject to the regulations, a tobacco product manufactured in Canada may be removed from a special excise warehouse for delivery to an accredited representative for their personal or official use.

Removal of imported products

30

47. (1) No person shall remove an imported tobacco product from an excise warehouse.

Exception

(2) Subject to the regulations, an imported tobacco product may be removed from an excise warehouse 35

- (a) for delivery to another excise warehouse;
- (b) for delivery to an accredited representative for their personal or official use;
- (c) for delivery as ships' stores, in accordance with the *Ships' Stores Regulations*; 5
- (d) for delivery to a duty free shop for sale or offer for sale in accordance with the *Customs Act*; or
- (e) for export in accordance with this Act by the excise warehouse licensee.

Restriction – special excise warehouse

10

48. No special excise warehouse licensee shall store a tobacco product that is manufactured in Canada in their special excise warehouse for any purpose other than its sale and distribution to an accredited representative for the personal or official use of the representative. 15

Special Duty on Exported Tobacco Products

Definition of "tobacco product"

49. In sections 50 to 53, "tobacco product" means manufactured tobacco other than cut filler, cut rag or products manufactured less fully 20
than cut filler or cut rag.

Imposition

50. (1) A special duty is imposed on tobacco products that are manufactured in Canada and exported by the tobacco licensee who manufactured them at the rates set out in Schedule 3. 25

When and by whom duty is payable

(2) Subject to sections 51 to 53, special duty is payable on the tobacco products by their manufacturer and is payable at the time they are exported. 30

Categories of tobacco products

51. (1) In subsections (2) and (3), cigarettes, tobacco sticks and manufactured tobacco other than cigarettes and tobacco sticks each constitute a category of tobacco product.

5

Exemption for limited exports

(2) Special duty is not payable by a tobacco licensee on a particular quantity of a category of tobacco product exported at a time in a year if the total quantity of that category of tobacco product, including the particular quantity, exported by the tobacco licensee in the year does not exceed 3% of the total quantity of that category of tobacco product manufactured by the tobacco licensee in the preceding year.

10

Excluded quantities

(3) The total quantities referred to in subsection (2) do not include any quantity of tobacco product on which special duty was not payable because of section 52 or 53 or was refunded under section 161.

15

Exported Tobacco Products Exemptions

Exemption – tobacco products for sale in foreign duty free shop

20

52. (1) Special duty is not payable on a tobacco product that is sold by the manufacturer of the tobacco product to the operator of a foreign duty free shop for duty-free sale by the operator in that shop.

25

Definition of "foreign duty free shop"

(2) In this section and section 161, "foreign duty free shop" means a retail store that is located in a country other than Canada and that is authorized under the laws of that country to sell goods free of duties and taxes to individuals who are about to leave that country.

30

**Exemption –
prescribed tobacco
product**

53. (1) Special duty is not payable on a tobacco product of a particular brand if

(a) the tobacco product of that brand is prescribed for the purposes of this subsection;

(b) during the three year period before the year in which the tobacco product of that brand is exported, the tobacco product of that brand was not sold in Canada, other than in a duty free shop, except in quantities not significantly greater than the minimum quantities sufficient for the purposes of registering the trade mark for that brand; and

(c) during any year before the three year period referred to in paragraph (b), sales in Canada of the product of that brand never exceeded

(i) 0.5% of total sales in Canada of similar products or,

(ii) if another percentage that is less than 0.5% is prescribed for the purposes of this subsection, that percentage of total sales in Canada of similar products.

**Exemption for
prescribed cigarettes**

(2) Special duty is not payable on cigarettes of a particular type or formulation, manufactured in Canada and exported under a brand that is also applied to cigarettes of a different type or formulation that are both manufactured and sold in Canada, if

(a) cigarettes of the particular type or formulation exported under that brand are prescribed for the purposes of this subsection; and

(b) cigarettes of that particular type or formulation have never been sold in Canada by their manufacturer under that brand or any other brand.

**Distinguishing
different cigarettes**

(3) For the purpose of subsection (2), a cigarette of a particular type or formulation sold under a brand may be considered to be different from another cigarette sold under that brand if it is reasonable to

consider them to be different having regard to their physical characteristics before and during consumption.

Duty on Unauthorized Tobacco Sales

Tobacco sold to purchaser not authorized to resell in Ontario

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54. (1) Duty is imposed on manufactured tobacco that is

(a) marked or stamped in accordance with a statute of the Province of Ontario to indicate that it is intended for retail sale in the Province; 10
and

(b) sold by the manufacturer of the manufactured tobacco, or by a person who is authorized under a statute of the Province to sell manufactured tobacco in the Province, to a purchaser who is not authorized under a statute of the Province to sell manufactured 15
tobacco in the Province.

Exception

(2) The duty is not imposed if the purchaser is a consumer in the Province of Ontario and the purchase is for the purchaser's personal use.

When duty payable

20

(3) The duty is payable by the person selling the manufactured tobacco to the purchaser and is payable at the time of the sale.

Amount of duty

(4) The duty imposed on manufactured tobacco is equal to the amount by which 25

(a) the duty that would have been imposed by section 41 on the manufactured tobacco if the applicable rates of duty were the rates set out in paragraphs 1(f), 2(d) and 3(b) of Schedule 1

exceeds

(b) the duty that was imposed by section 41 on the manufactured 30
tobacco.

**Tobacco sold to
purchaser not
authorized to resell
in Quebec or New
Brunswick**

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55. (1) Duty is imposed on cigarettes and tobacco sticks that are

(a) marked or stamped in accordance with a statute of the Province of Quebec or New Brunswick to indicate that they are intended for retail sale in that Province; and

(b) sold by their manufacturer, or by a person who is authorized 10
under a statute of the Province to sell manufactured tobacco in the Province, to a purchaser who is not authorized under a statute of the Province to sell manufactured tobacco in the Province.

Exception

(2) The duty is not imposed if the purchaser is a consumer located in 15
the province referred to in subsection (1) and the purchase is for the purchaser's personal use.

**When duty is
payable**

(3) The duty imposed is payable by the person selling the cigarettes 20
or tobacco sticks to the purchaser and is payable at the time of the sale.

Amount of duty

(4) The duty imposed on the cigarettes and tobacco sticks is equal to
the amount by which

(a) the duty that would have been imposed by section 41 on them if 25
the applicable rate of duty were the rate set out in paragraph 1(f) or 2(d) of Schedule 1

exceeds

(b) the duty that was imposed by section 41 on them.

**Cigarettes sold to
purchaser not
authorized to resell
in Nova Scotia**

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56. (1) Duty is imposed on cigarettes that are

(a) marked or stamped in accordance with a statute of the Province of Nova Scotia to indicate that they are intended for retail sale in that Province; and

(b) sold by their manufacturer, or by a person who is authorized under a statute of the Province to sell manufactured tobacco in the Province, to a purchaser who is not authorized under a statute of the Province to sell manufactured tobacco in the Province. 5

Exception

(2) The duty is not imposed if the purchaser is

(a) a consumer located in the Province of Nova Scotia or the Province of Prince Edward Island and the purchase is for the consumer's personal use; or 10

(b) a person authorized under a statute of the Province of Prince Edward Island to sell manufactured tobacco in that Province.

When and by whom duty payable

15

(3) The duty is payable by the person selling the cigarettes to the purchaser and is payable at the time of the sale.

Amount of duty

(4) The duty imposed is equal to the amount by which 20

(a) the duty that would have been imposed by section 41 on the cigarettes if the applicable rate of duty were the rate set out in paragraph 1(f) of Schedule 1

exceeds

(b) the duty that was imposed by section 41 on the cigarettes. 25

Definitions

57. The definitions in this section apply in sections 58, 59 and 162.

**"licensed retail
vendor"**

**« vendeur au détail
titulaire de licence »**

"licensed retail vendor" means a retail vendor licensed as such under the *Health Tax Act*, R.S.P.E.I. 1988, c. H-3. 5

**"licensed wholesale
vendor"**

**« vendeur en gros
titulaire de licence »**

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"licensed wholesale vendor" means a wholesale vendor licensed as such under the *Health Tax Act*, R.S.P.E.I. 1988, c. H-3.

**"Nova Scotia
cigarettes"**

**« cigarettes de la
Nouvelle-Ecosse »**

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"Nova Scotia cigarettes" means cigarettes that are marked or stamped in accordance with Part III of the *Revenue Act*, S.N.S. 1995-96, c. 17, to indicate that the cigarettes are intended for retail sale in the Province of Nova Scotia. 20

**"Nova Scotia
tobacco sticks"**

**« bâtonnets de tabac
de la
Nouvelle-Ecosse »**

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"Nova Scotia tobacco sticks" means tobacco sticks that are marked or stamped in accordance with Part III of the *Revenue Act*, S.N.S. 1995-96, c. 17, to indicate that the tobacco sticks are intended for retail sale in the Province of Nova Scotia.

**Diverted P.E.I.
cigarettes**

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58. (1) Duty is imposed on Nova Scotia cigarettes, to which paragraph 1(e) of Schedule 1 applies, that a licensed wholesale vendor sells to a person other than

(a) a licensed retail vendor; or

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(b) a consumer in the Province of Prince Edward Island for the consumer's personal use.

**When duty is
payable and amount**

(2) The duty is payable by the licensed wholesale vendor at the time of the sale and is equal to the amount by which

(a) the duty that would have been imposed by section 41 on the cigarettes if the applicable rate of duty were the rate set out in paragraph 1(f) of Schedule 1

exceeds

(b) the duty that was imposed by section 41 on the cigarettes.

**Diverted Nova
Scotia tobacco**

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59. (1) Duty is imposed on Nova Scotia cigarettes or Nova Scotia tobacco sticks, to which section 162 and paragraph 1(e) or 2(d) of Schedule 1 apply, that a licensed retail vendor sells to a person other than

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(a) a licensed retail vendor; or

(b) a consumer in the Province of Prince Edward Island for the consumer's personal use.

**When duty payable
and amount**

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(2) The duty is payable by the licensed retail vendor at the time of the sale and is equal to the amount by which

(a) the duty that would have been imposed by section 41 on the cigarettes or tobacco sticks if the applicable rate of duty were the rate set out in paragraph 1(f) or 2(d) of Schedule 1

25

exceeds

(b) the duty imposed at the rates of

(i) \$0.08513 per five cigarettes, in the case of cigarettes, and

(ii) \$0.01065 per tobacco stick, in the case of tobacco sticks.

Excess sale of black stock – Ontario

60. (1) If a supplier sells to an on-reserve retailer a quantity of black stock, in respect of which subparagraph 1(a)(ii), 2(a)(ii) or 3(a)(ii) of Schedule 1 applies, that is in excess of the quantity of black stock that the on-reserve retailer is authorized under the *Tobacco Tax Act*, R.S.O. 1990, c. T.10, to purchase, duty is imposed on that excess black stock. 5

Illegal sale of black stock

(2) If a supplier sells black stock, in respect of which subparagraph 1(a)(ii), 2(a)(ii) or 3(a)(ii) of Schedule 1 applies, to a person other than an Indian consumer in Ontario or an on-reserve retailer, duty is imposed on that black stock. 10

When duty is payable and amount

(3) The duty imposed by subsection (1) or (2) is payable by the supplier at the time of the sale and is equal to the amount by which 15

(a) the duty that would have been imposed by section 41 on the black stock if the applicable rate of duty were the rate set out in paragraph 1(f), 2(d) or 3(b) of Schedule 1 20

exceeds

(b) the duty that was imposed by section 41 on the black stock.

Definitions

(4) The definitions in this subsection apply in this section.

"on-reserve retailer"
« *détaillant situé
dans une réserve* »

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"on-reserve retailer" means a retailer on a reserve in the Province of Ontario who is authorized under the *Tobacco Tax Act*, R.S.O. 1990, c. T.10, to sell black stock cigarettes, in the ordinary course of the retailer's business, to Indian consumers in the Province. 30

"reserve"

« *réserve* »

"reserve" includes an Indian settlement as defined in section 2 of the *Indians and Bands on certain Indian Settlements Remission Order*, SI/92-102, or in section 1 of the *Indians and Bands on Certain Indian Settlements Remission Order (1997)*, SI/97-127. 5

"supplier"

« *fournisseur* »

"supplier" means a wholesaler who has a permit under section 9 of the *Tobacco Tax Act*, R.S.O. 1990, c. T.10, to purchase and sell black stock cigarettes. 10

Excess sale of black stock – Nova Scotia

61. (1) If a designated wholesale vendor sells to a designated retail vendor a quantity of black stock cigarettes, in respect of which subparagraph 1(c)(ii) of Schedule 1 applies, that is in excess of the quantity of black stock cigarettes that the designated wholesale vendor is authorized in writing by the Nova Scotia Provincial Tax Commissioner to sell to the designated retail vendor without the collection of tax under Part III of the *Revenue Act*, S.N.S. 1995-96, c. 17, duty is imposed on those excess black stock cigarettes. 15 20

Illegal sale of black stock

(2) If a designated wholesale vendor sells black stock cigarettes, in respect of which subparagraph 1(c)(ii) of Schedule 1 applies, to a person other than an Indian consumer on a reserve in Nova Scotia or a designated retail vendor, duty is imposed on those black stock cigarettes. 25

When duty is payable and amount

(3) The duty imposed by subsection (1) or (2) is payable by the designated wholesale vendor at the time of the sale and is equal to the amount by which 30

(a) the duty that would have been imposed by section 41 on those black stock cigarettes if the applicable rate of duty were the rate set out in paragraph 1(f) of Schedule 1

exceeds

(b) the duty that was imposed by section 41 on those black stock cigarettes.

Definitions

(4) The definitions in this subsection apply in this section.

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**"designated retail
vendor"**

« *vendeur au détail
désigné* »

"designated retail vendor" means a retail vendor on a reserve in the 10
Province of Nova Scotia who is designated in writing by the council
of the band, within the meaning of subsection 2(1) of the *Indian Act*,
in Nova Scotia, and by the Nova Scotia Provincial Tax
Commissioner, as a vendor from whom Indians on the reserve may
buy manufactured tobacco on which tax under Part III of the *Revenue* 15
Act, S.N.S. 1995-96, c. 17, is not payable.

**"designated
wholesale vendor"**

« *vendeur en gros
désigné* »

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"designated wholesale vendor" means a wholesale vendor who has a
wholesale vendor's permit under the *Revenue Act*, S.N.S. 1995-96,
c. 17, for the sale of black stock to designated retail vendors.

PART 4

ALCOHOL

25

General

**Application –
Importation of
Intoxicating Liquors
Act**

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62. For greater certainty, the *Importation of Intoxicating Liquors Act* continues to apply to the importation, sending, taking and transportation of intoxicating liquor into a province.

**Prohibition –
production etc.**

63. (1) No person shall, except in accordance with an alcohol licence,

(a) produce, package or denature spirits; or

(b) produce or package wine.

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Exception – wine

(2) Paragraph (1)(b) does not apply to

(a) the production of wine by an individual for their personal use;

(b) the packaging of the wine referred to in paragraph (a) by an individual for their personal use; or

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(c) the packaging of wine by a purchaser at a bottle-your-own premises.

**Prohibition – sale of
wine produced for
personal use**

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64. No person shall sell or put to a commercial use wine that was produced or packaged by an individual for their personal use.

**Wine produced by
individual**

65. For the purposes of this Act, wine is not produced or packaged 20 by an individual if it has been produced or packaged by their agent.

**Prohibition –
ferment-on-premises
facility**

66. No person shall carry on at a ferment-on-premises facility any 25 activity specified in a licence or registration issued under this Act other than an activity specified in a ferment-on-premises registration.

**Application –
in-transit and
transhipped alcohol**

67. Sections 68 to 70, 73, 74, 82, 85, 94, 95, 97 and 98 do not apply to imported alcohol or specially denatured spirits that, in accordance with the *Customs Act* and the regulations made under that Act, are 5

(a) transported by a customs bonded carrier from a place outside Canada to another place outside Canada;

(b) stored in a customs bonded warehouse or sufferance warehouse for subsequent delivery to a place outside Canada; or 10

(c) transported by a customs bonded carrier

(i) from a place outside Canada to a customs bonded warehouse or a sufferance warehouse for subsequent delivery to a place outside Canada, or

(ii) from a customs bonded warehouse or a sufferance warehouse to a place outside Canada. 15

Bulk Alcohol

**Prohibition –
ownership**

68. (1) No person shall own bulk alcohol unless it was 20

(a) produced by an alcohol licensee; or

(b) imported by an alcohol licensee or a licensed user.

Exceptions

(2) Subsection (1) does not apply to the ownership of

(a) bulk wine by an individual if the wine was produced by an individual for their personal use; and 25

(b) an unmarked imported special container of alcohol that is placed in a sufferance warehouse for the purpose of being marked in accordance with section 78 or 82.

Prohibition – possession

69. (1) No person shall possess bulk alcohol.

Exception

(2) Subsection (1) does not apply to

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(a) an alcohol licensee, a licensed user or an alcohol registrant who possesses bulk alcohol that is produced or imported by an alcohol licensee;

(b) a licensed user or an alcohol registrant who possesses bulk alcohol that has been imported by the licensed user; 10

(c) a sufferance warehouse licensee who possesses in their sufferance warehouse

(i) bulk alcohol that has been imported by an alcohol licensee or a licensed user; and

(ii) an unmarked special container of alcohol that has been placed 15
in the warehouse for the purpose of being marked in accordance
with section 78 or 82;

(d) a ferment-on-premises registrant who possesses bulk wine that has been produced at the registrant's ferment-on-premises facility by an individual for the individual's personal use; 20

(e) an individual who possesses at their residence bulk wine that was produced at a residence or a ferment-on-premises facility by an individual for the individual's personal use; or

(f) an individual who is transporting bulk wine from a residence to another residence or from a ferment-on-premises facility to a 25
residence, if the wine was produced at a residence or a ferment-on-premises facility by an individual for the individual's personal use.

Prohibition – supply

70. (1) No person shall supply bulk alcohol to a person other than to an alcohol licensee, a licensed user or an alcohol registrant. 30

Exceptions

(2) Subsection (1) does not apply to an individual who supplies bulk wine produced by an individual for their personal use.

Restriction – alcohol registrant

71. An alcohol registrant shall not carry on any activity in respect of bulk alcohol that is in their possession other than storage and transportation. 5

Restriction – licensed user

72. A licensed user shall not use or dispose of bulk alcohol other than to

- (a) use it for a purpose other than in or as a beverage; 10
- (b) return it to the alcohol licensee who supplied it;
- (c) subject to section 74, export it; or
- (d) destroy it in a manner approved by the Minister.

Importation – bulk alcohol

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73. Subject to sections 78 and 82, no person other than an alcohol licensee or a licensed user shall import bulk alcohol.

Unauthorized export

74. No person shall export bulk alcohol other than

- (a) the alcohol licensee who is responsible for the alcohol; or 20
- (b) the licensed user who imported the alcohol.

Special Containers of Spirits

Marked container deemed packaged

75. (1) If a special container of spirits is marked, the spirits are 25
deemed to be packaged at the time the container is marked.

Exception

(2) The marking of the container is not packaging for the purposes of section 13 and subsection 63(1).

Marking

76. (1) Subject to section 78, no person other than an alcohol licensee shall mark a special container of spirits.

Container to be warehoused

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(2) If an alcohol licensee marks a special container of spirits, the licensee shall immediately enter it into an excise warehouse.

Importation

77. No person, other than an excise warehouse licensee, shall import a marked special container of spirits.

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Marking of imported container

78. If a special container of spirits that is imported by an excise warehouse licensee is not marked when it is reported under the *Customs Act*, it shall be placed in a sufferance warehouse for the purpose of being marked by the excise warehouse licensee.

Imported container to be warehoused

79. If a marked special container of spirits is released under the *Customs Act*, the excise warehouse licensee who imported it shall immediately enter it into their excise warehouse.

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Special Containers of Wine

Marked container deemed packaged

80. (1) If a special container of wine is marked, the wine is deemed to be packaged at the time the container is marked.

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Exception

(2) The marking of the container is not packaging for the purposes of section 13 or subsection 63(1).

Marking

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81. Subject to section 82, no person other than an alcohol licensee shall mark a special container of wine.

Marking of imported container

82. If a special container of wine that is imported by a person other than an alcohol licensee or licensed user is not marked when it is reported under the *Customs Act*, it shall be placed in a sufferance warehouse for the purpose of being marked by the importer or owner of the container. 5

Delivery of imported container

83. If a marked special container of wine is released under the *Customs Act*, the person who imported it shall immediately deliver it to a bottle-your-own premises unless 10

- (a) it was imported by an excise warehouse licensee; and
- (b) the excise warehouse licensee immediately enters it into their excise warehouse. 15

Packaged Alcohol

Information on container

84. Every alcohol licensee who packages alcohol shall package the alcohol in a container that has printed on it prescribed information. 20

Prohibition – possession

85. (1) No person shall possess packaged alcohol on which duty has not been paid.

Exception

(2) Non-duty-paid packaged alcohol, other than a marked special container of alcohol,

- (a) that is packaged by an alcohol licensee or imported by an excise warehouse licensee, may be possessed by
 - (i) an excise warehouse licensee in their excise warehouse, 30
 - (ii) a licensed user,
 - (iii) a registered user,

(iv) a prescribed person who is transporting the alcohol under prescribed circumstances and conditions,

(v) a duty free shop licensee, in their duty free shop,

(vi) an accredited representative, for their personal or official use,
or

5

(vii) a person as ships' stores, if the acquisition and possession of the alcohol by that person is in accordance with the *Ships' Stores Regulations*;

(b) that is imported, may be possessed by a sufferance warehouse licensee, in their sufferance warehouse;

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(c) that is imported by a licensed user, may be possessed by

(i) the licensed user, or

(ii) a prescribed person who is transporting the alcohol under prescribed circumstances and conditions;

(d) that is imported by an accredited representative, may be possessed
by

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(i) the accredited representative, for their personal or official use, or

(ii) a prescribed person who is transporting the alcohol under prescribed circumstances and conditions;

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(e) that is imported for sale in a duty free shop, to an accredited representative or for use as ships' stores, may be possessed by

(i) a customs bonded warehouse licensee, in their customs bonded warehouse,

(ii) a duty free shop licensee, in their duty free shop,

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(iii) an accredited representative, for their personal or official use,

(iv) a customs bonded carrier in accordance with the *Customs Act*,
or

(v) a person as ships' stores if the acquisition and possession of the alcohol by that person is in accordance with the *Ships' Stores Regulations*;

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(f) that is imported for supply to an air carrier that is licensed under section 69 or 73 of the *Canada Transportation Act* to operate an international air service, may be possessed by a customs bonded warehouse licensee, in their customs bonded warehouse;

(g) that is imported by an individual in accordance with the *Customs Act* and the *Customs Tariff* for personal use, may be possessed by an individual; and 5

(h) that is wine that is produced and packaged by an individual for personal use, may be possessed by an individual.

Exception – special containers

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(3) A non-duty-paid marked special container of alcohol may be possessed by

(a) an excise warehouse licensee in their excise warehouse;

(b) a prescribed person who is transporting the alcohol under 15 prescribed circumstances and conditions;

(c) in the case of an imported special container of alcohol, a sufferance warehouse licensee, in their sufferance warehouse; or

(d) in the case of a special container of spirits, a registered user.

Storage

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86. A ferment-on-premises registrant shall not store packaged wine at their ferment-on-premises facility.

Restriction – licensed user

87. A licensed user shall not use or dispose of non-duty-paid 25 packaged alcohol other than to

(a) use it for a purpose other than in or as a beverage;

(b) return it to the excise warehouse licensee who supplied it;

(c) export it, if the alcohol was imported by the licensed user; or

(d) destroy it in a manner approved by the Minister.

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**Restriction –
registered user**

88. A registered user shall not use or dispose of non-duty-paid packaged spirits other than to

- (a) use it for a purpose described in section 15; 5
- (b) use it for analysis in a manner approved by the Minister;
- (c) return it to the excise warehouse licensee who supplied it; or
- (d) destroy it in a manner approved by the Minister.

**Unauthorized
removal – spirits**

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89. No person other than a registered user shall remove spirits from a marked special container of spirits.

**Unauthorized
removal – wine**

90. (1) No person shall remove wine from a marked special container 15
of wine other than a purchaser in a bottle-your-own premises.

Exception

(2) If the operator of a bottle-your-own-premises returns a marked special container of wine to the alcohol licensee or excise warehouse licensee who supplied the container to the operator, the licensee may 20
remove the wine from the container for the purpose of destroying the wine in a manner approved by the Minister.

Denatured Spirits and Specially Denatured Spirits

**Prohibition – sale as
beverage**

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91. (1) No person shall sell or supply denatured spirits or specially denatured spirits for use in or as a beverage.

**Prohibition – use as
beverage**

(2) No person shall use denatured spirits or specially denatured spirits 30
in or as a beverage.

Recovery of spirits

92. No person, other than an alcohol licensee, shall recover spirits from denatured spirits or specially denatured spirits.

**Unauthorized use of
SDS**

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93. No person, other than an SDS registrant, shall use specially denatured spirits.

**Unauthorized
possession of SDS**

94. (1) No person shall possess specially denatured spirits.

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**Exception – SDS
produced by alcohol
licensee**

(2) Specially denatured spirits that are produced by an alcohol licensee may be possessed by an alcohol licensee, an alcohol registrant 15 or an SDS registrant.

**Exception – SDS
imported by alcohol
licensee**

(3) Specially denatured spirits that are imported by an alcohol 20 licensee may be possessed by an alcohol licensee, an alcohol registrant, an SDS registrant or a sufferance warehouse licensee.

**Exception – SDS
imported by SDS
registrant**

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(4) Specially denatured spirits that are imported by an SDS registrant may be possessed by the SDS registrant, an alcohol registrant or a sufferance warehouse licensee.

**Unauthorized supply
of SDS**

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95. No person shall supply specially denatured spirits to a person other than an alcohol licensee, an SDS registrant or an alcohol registrant.

Restriction on alcohol registrant

96. An alcohol registrant shall not carry on any activity in respect of specially denatured spirits that the registrant possesses other than their storage and transportation.

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Unauthorized importing of SDS

97. No person shall import specially denatured spirits other than an alcohol licensee or an SDS registrant.

Unauthorized exporting of SDS

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98. No person shall export specially denatured spirits other than the SDS registrant who imported them or an alcohol licensee.

Restriction on disposal

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99. An SDS registrant shall not dispose of specially denatured spirits other than to

- (a) return them to the alcohol licensee who supplied them;
- (b) export them, if they were imported by the SDS registrant; or
- (c) destroy them in a manner approved by the Minister.

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Responsibility for Bulk Alcohol

Responsibility

100. Subject to sections 101 to 103 and 107, the person who is responsible for bulk alcohol at any time is

- (a) the alcohol licensee or licensed user who owns the alcohol at that time; 25
- (b) if the alcohol is not owned at that time by an alcohol licensee or licensed user, the alcohol licensee who last owned it; or
- (c) if the alcohol was never owned by an alcohol licensee or a licensed user, the alcohol licensee who imported or produced it or the 30
licensed user who imported it.

**Return of alcohol
purchased from
unlicensed person**

101. If an alcohol licensee or a licensed user (in this section referred to as the "purchaser") purchases bulk alcohol from a person who is not an alcohol licensee or a licensed user (in this section referred to as the "unlicensed person"), and, within 60 days after the purchaser receives the alcohol, 5

(a) the purchaser returns the alcohol to the alcohol licensee who supplied it, and 10

(b) the ownership of the alcohol reverts to the unlicensed person,

then at the later of the time at which the alcohol licensee who supplied the alcohol receives the alcohol and the time at which the ownership of the alcohol reverts to the unlicensed person

(c) the alcohol licensee who was responsible for the alcohol immediately before it was purchased by the purchaser becomes responsible for the alcohol, and 15

(d) the purchaser of the alcohol ceases to be responsible for the alcohol.

**Exception –
provincial ownership**

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102. If a government of a province or a provincial liquor authority that is an alcohol licensee or a licensed user owns bulk alcohol for a purpose not related to its licence, section 100 applies to that alcohol as if the alcohol were not owned by an alcohol licensee or a licensed user. 25

**Alcohol imported by
licensed user**

103. A licensed user who imports bulk alcohol is responsible for the alcohol.

**Blended alcohol –
joint and several
responsibility**

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104. If bulk alcohol for which a person is responsible is blended with bulk alcohol for which another person is responsible, both persons are jointly and severally responsible for the blended bulk alcohol. 35

Person not responsible

105. A person who is responsible for bulk alcohol ceases to be responsible for it if the alcohol is

- (a) taken for use and the duty on the alcohol is paid; 5
- (b) used for a purpose described in section 128 or subsection 129(1);
- (c) denatured into denatured spirits or specially denatured spirits;
- (d) exported in accordance with this Act; or
- (e) lost,
 - (i) in the case of spirits, in prescribed circumstances and under 10 prescribed conditions, or
 - (ii) in the case of wine, if the loss is recorded in a manner authorized by the Minister.

Notification of change of ownership

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106. If an alcohol licensee or a licensed user (in this section referred to as the "purchaser") purchases bulk alcohol from a person who is not an alcohol licensee or a licensed user, the purchaser shall, except in respect of bulk alcohol that is to be imported,

- (a) at the time of the purchase obtain from the vendor the name and 20 address of the alcohol licensee who is responsible for the alcohol immediately before the alcohol is sold to the purchaser; and
- (b) without undue delay notify in writing that licensee of the 30 purchase.

Removal of special container

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107. If an unmarked special container of alcohol is removed by an alcohol licensee from an excise warehouse in accordance with section 139, the alcohol licensee is responsible for the alcohol, unless the alcohol is owned by another alcohol licensee or a licensed user, in 30 which case the other alcohol licensee or the licensed user is responsible for it.

Imposition and Payment of Duty on Alcohol

Imposition – domestic spirits

108. (1) Duty is imposed on spirits produced in Canada at the rate of \$11.066 per litre of absolute ethyl alcohol contained in the spirits. 5

Time of imposition

(2) The duty is imposed at the time the spirits come into existence.

Meaning of "spirits produced in Canada"

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(3) In subsection (1), "spirits produced in Canada" includes spirits that are recovered in Canada from wine, beer, denatured spirits or specially denatured spirits.

Imposition – low alcoholic strength spirits

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109. If, at the time that spirits are packaged, the spirits contain not more than 7% of absolute ethyl alcohol by volume,

(a) the duty imposed on the spirits by section 108 of this Act or section 21.1 of the *Customs Tariff* is relieved; and 20

(b) duty is imposed on the spirits at the rate of \$0.2459 per litre of spirits.

Duty payable when packaged

110. (1) Subject to sections 112 and 113, the duty imposed on spirits 25 is payable at the time the spirits are packaged unless, immediately after packaging, they are entered into an excise warehouse.

Payable by responsible person

(2) Duty is payable by the person who is responsible for the spirits 30 immediately before they are packaged.

**Duty payable when
removed from
warehouse**

111. If packaged spirits are removed from an excise warehouse for entry into the duty-paid market, duty is payable on the spirits at the time of their removal and is payable by the excise warehouse licensee of the warehouse. 5

**Duty payable on
bulk spirits taken
for use**

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112. If bulk spirits are taken for use, duty is payable at the time the spirits are taken for use by the person who is responsible for the spirits at that time.

**Duty payable on
unaccounted bulk
spirits**

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113. (1) Duty is payable by the person who is responsible for bulk spirits on any portion of the spirits that cannot be accounted for as being in the possession of an alcohol licensee, a licensed user or an alcohol registrant. 20

When duty payable

(2) The duty is payable at the time the spirits cannot be accounted for.

**Duty payable on
packaged spirits
taken for use**

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114. If non-duty-paid packaged spirits that are in the possession of an excise warehouse licensee or a licensed user are taken for use, duty is payable at the time the spirits are taken for use and is payable by the licensee or user. 30

**Duty payable on
unaccounted
packaged spirits**

115. (1) Duty is payable on non-duty-paid packaged spirits that have been received by an excise warehouse licensee or a licensed user but cannot be accounted for 35

(a) as being in the excise warehouse of the licensee or the specified premises of the user;

(b) as having been removed, used or destroyed in accordance with this Act; or

(c) as having been lost in prescribed circumstances and under prescribed conditions.

When duty payable

(2) Duty is payable by the licensee or user at the time the spirits cannot be accounted for.

Fortifying wine

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116. (1) An alcohol licensee may use bulk spirits to fortify wine.

Duty not payable

(2) If an alcohol licensee uses bulk spirits to fortify wine to an alcoholic strength not in excess of 22.9% absolute ethyl alcohol by volume, the duty imposed on the spirits by section 108 of this Act or section 21.1 of the *Customs Tariff* is not payable.

Deemed spirits

(3) If wine is fortified to an alcoholic strength in excess of 22.9% absolute ethyl alcohol by volume

(a) the wine is deemed to be spirits produced at the time the wine is fortified in excess of that percentage; and

(b) the duty imposed by section 108 of this Act or section 21.1 of the *Customs Tariff* on the spirits that were used to fortify the wine is relieved.

Duty not payable – DS and SDS

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117. If an alcohol licensee denatures bulk spirits into denatured spirits or specially denatured spirits the duty imposed on the spirits by section 108 of this Act or section 21.1 of the *Customs Tariff* is relieved.

Imposition of special duty

118. (1) In addition to the duty imposed by section 21.1 or 21.2 of the *Customs Tariff*, a special duty is imposed on imported spirits delivered to or imported by a licensed user at the rate of \$0.12 per litre of absolute ethyl alcohol contained in the spirits. 5

Bulk spirits

(2) If an alcohol licensee imports bulk spirits that are delivered to a licensed user, the special duty is payable at the time the spirits are delivered to the licensed user and is payable 10

(a) by the alcohol licensee who is responsible for the spirits at that time; or

(b) if the licensed user is responsible for the spirits at that time, by the alcohol licensee who was responsible for the spirits immediately before the licensed user became responsible for them. 15

Packaged spirits

(3) If imported packaged spirits or imported spirits that have been packaged in Canada are removed from an excise warehouse for delivery to a licensed user, the special duty is payable by the excise warehouse licensee of the excise warehouse at the time the spirits are removed from the excise warehouse. 20

Spirits imported by licensed user

(4) If bulk or packaged spirits are imported by a licensed user, the special duty 25

(a) is payable by the licensed user at the time the spirits are imported; and

(b) shall be paid and collected under the *Customs Act*, and interest and penalties shall be imposed, calculated, paid and collected under that Act, as if the duty were a duty levied on the spirits under section 20 of the *Customs Tariff*; and, for those purposes, the *Customs Act* applies with any modifications that the circumstances require. 30

**Imposition – bulk
wine taken for use**

119. (1) Duty is imposed on bulk wine that is taken for use at the rates set out in Schedule 4.

**Payable by
responsible person**

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(2) The duty is payable at the time the wine is taken for use and is payable by the person who is responsible for the wine at that time.

**Imposition – wine
packaged in Canada**

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120. (1) Duty is imposed on wine that is packaged in Canada at the rates set out in Schedule 4.

Time of imposition

(2) The duty is imposed at the time the wine is packaged and is payable at that time unless, immediately after packaging, it is entered 15 into an excise warehouse.

**Payable by
responsible person**

(3) The duty is payable by the person who is responsible for the wine immediately before it is packaged.

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**Exception – wine
produced for
personal use**

121. Subsections 119(1) and 120(1) do not apply to wine that is produced by an individual for their personal use if it is consumed or 25 packaged by an individual.

**Duty payable on
removal from
warehouse**

122. If packaged wine is removed from an excise warehouse for entry 30 into the duty-paid market, duty is payable on the wine at the time of its removal and is payable by the excise warehouse licensee of the warehouse.

**Duty payable on
packaged wine taken
for use**

123. If non-duty-paid packaged wine that is in the possession of an excise warehouse licensee or a licensed user is taken for use, duty is payable at the time it is taken for use and is payable by the licensee or user. 5

**Duty payable on
unaccounted
packaged wine**

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124. (1) Duty is payable on non-duty-paid packaged wine that has been received by an excise warehouse licensee or a licensed user but cannot be accounted for

(a) as being in the excise warehouse of the licensee or the specified premises of the user; 15

(b) as having been removed, used or destroyed in accordance with this Act; or

(c) as having been lost in prescribed circumstances and under prescribed conditions.

When duty payable

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(2) Duty is payable by the licensee or user at the time the wine cannot be accounted for.

Liability of Excise Warehouse Licensees and Licensed Users

**Non-duty-paid
packaged alcohol**

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125. If non-duty-paid packaged alcohol is entered into an excise warehouse immediately after being packaged, the excise warehouse licensee is liable for the duty on the alcohol at the time it is entered into the warehouse.

**Imported packaged
alcohol**

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126. If, in accordance with subsection 21.2(3) of the *Customs Tariff*, imported packaged alcohol is without the payment of duty released under the *Customs Act* to the excise warehouse licensee or licensed user

who imported it, the excise warehouse licensee or licensed user is liable for the duty on the alcohol.

**Transfer between
warehouse licensees**

127. (1) If non-duty-paid packaged alcohol is removed from the excise warehouse of an excise warehouse licensee (in this subsection referred to as the "transferor") to the excise warehouse of another excise warehouse licensee, at the time the alcohol is entered into the warehouse of the other licensee

(a) the other licensee becomes liable for the duty on the alcohol; and

(b) the transferor ceases to be liable for the duty.

**Transfer to licensed
user**

(2) If non-duty-paid packaged alcohol is removed from an excise warehouse to the specified premises of a licensed user, at the time the alcohol is entered into those premises,

(a) the licensed user becomes liable for the duty on the alcohol; and

(b) the excise warehouse licensee of the warehouse ceases to be liable for the duty.

**Transfer from
licensed user**

(3) If non-duty-paid packaged alcohol is removed from the specified premises of a licensed user to an excise warehouse, at the time the alcohol is entered into the warehouse

(a) the excise warehouse licensee becomes liable for the duty on the alcohol; and

(b) the licensed user ceases to be liable for the duty.

Non-dutiable Uses and Removals of Alcohol

**Non-dutiable uses –
bulk alcohol**

128. (1) Duty is not payable on bulk alcohol

- (a) taken for analysis by an alcohol licensee or a licensed user in a manner approved by the Minister;
- (b) destroyed by an alcohol licensee or a licensed user in a manner approved by the Minister;
- (c) used by a licensed user in a formula for which the user has approval from the Minister; or
- (d) used by a licensed user in a process in which the ethyl alcohol is destroyed to the extent approved by the Minister.

**Non-dutiable uses –
packaged alcohol**

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(2) Duty is not payable on non-duty-paid packaged alcohol

(a) taken for analysis by an excise warehouse licensee or a licensed user in a manner approved by the Minister;

(b) destroyed by an excise warehouse licensee or a licensed user in a manner approved by the Minister;

15

(c) used by a licensed user in a formula for which the user has approval from the Minister; or

(d) used by a licensed user in a process in which the ethyl alcohol is destroyed to the extent approved by the Minister.

No duty

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(3) Duty is not payable on bulk alcohol or non-duty-paid packaged alcohol that is taken for analysis or destroyed by the Minister.

**Duty not payable –
vinegar**

129. (1) Duty is not payable on alcohol that is used by a licensed user to produce vinegar if not less than 0.5 kg of acetic acid is produced from every litre of absolute ethyl alcohol used.

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**Deemed taken for
use if deficiency**

(2) If a licensed user uses alcohol to produce vinegar and less than 0.5 kg of acetic acid is produced from every litre of absolute ethyl alcohol used, the licensed user is deemed to have taken for use, at the time the vinegar is produced, a volume of that alcohol that is equivalent

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to the volume of litres of absolute ethyl alcohol determined by the formula

$$A - (2 \times B)$$

where

A is the number of litres of absolute ethyl alcohol used; and

B is the number of kilograms of acetic acid produced.

**Non-dutiable
removals – packaged
alcohol**

130. (1) Duty is not payable on non-duty-paid packaged alcohol, other than a marked special container of alcohol, that is removed from an excise warehouse

(a) for delivery

(i) to an accredited representative for their personal or official use,

(ii) to a duty free shop for sale in accordance with the *Customs Act*,

(iii) to a registered user for use in accordance with the user's registration, or

(iv) as ships' stores in accordance with the *Ships' Stores Regulations*; or

(b) for export by the excise warehouse licensee of the excise warehouse in accordance with this Act.

**Duty not payable –
special container of
spirits**

(2) Duty is not payable on spirits contained in a marked special container that is removed from an excise warehouse

(a) for delivery to a registered user for use in accordance with the user's registration; or

(b) in the case of an imported container, for export by the excise warehouse licensee of the warehouse in accordance with this Act.

Duty not payable – special container of wine

(3) Duty is not payable on imported wine contained in an imported marked special container that is removed from an excise warehouse for export by the excise warehouse licensee of the warehouse in accordance with this Act. 5

Determining Volume of Alcohol

Volume of alcohol

131. (1) The volume and absolute ethyl alcohol content of alcohol shall be determined in the prescribed manner using an instrument approved under subsection (2). 10

Approval of instrument

(2) The Minister may examine and approve an instrument or a class, type or design of instruments for the measurement of the volume and absolute ethyl alcohol content of alcohol. 15

Re-examination

(3) The Minister may at any time direct in writing that any instrument previously examined and approved, or of a class, type or design previously examined and approved, by the Minister be submitted to the Minister for re-examination and, if the Minister so directs, the person who has the custody and control of the instrument shall immediately submit it to the Minister for re-examination. 20

Revocation of approval

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(4) After re-examining an instrument, the Minister may, in writing, revoke the Minister's approval of that instrument or instruments of the same class, type or design as that instrument.

Special circumstances

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132. If the Minister determines that circumstances or conditions make it difficult to determine the volume or the absolute ethyl alcohol content of alcohol, the determination may be made in another manner that is approved by the Minister. 35

Excise Warehouses

Restriction – entering into warehouse

133. No person shall enter non-duty-paid packaged alcohol into an excise warehouse except in accordance with this Act and the regulations. 5

Import by warehouse licensee

134. (1) If, in accordance with subsection 21.2(3) of the *Customs Tariff*, imported packaged alcohol is without the payment of duty released under the *Customs Act* to the excise warehouse licensee who imported it, the licensee shall immediately enter it into the excise warehouse of the licensee. 10

Import by licensed user

(2) If, in accordance with subsection 21.2(3) of the *Customs Tariff*, imported packaged alcohol is without payment of duty released under the *Customs Act* to the licensed user who imported it, the licensed user shall immediately enter it into the specified premises of the licensed user. 15 20

Restriction on removal

135. (1) No person shall remove non-duty-paid packaged alcohol from an excise warehouse.

Exception

(2) Subject to the regulations, a person may remove from an excise warehouse

(a) non-duty-paid packaged alcohol, other than a marked special container of alcohol, for

(i) entry into the duty-paid market, 30

(ii) delivery to another excise warehouse,

(iii) delivery to an accredited representative for their personal or official use,

(iv) delivery as ships' stores, in accordance with the *Ships' Stores Regulations*,

(v) delivery to a duty free shop for sale in accordance with the *Customs Act* to persons who are about to leave Canada,

(vi) delivery to a licensed user,

5

(vii) delivery to a registered user, or

(viii) export;

(b) a non-duty-paid marked special container of wine for

(i) delivery to another excise warehouse, or

(ii) entry into the duty-paid market for delivery to a bottle-your-own premises;

(c) a non-duty-paid marked special container of spirits for delivery

(i) to another excise warehouse, or

(ii) to a registered user; or

(d) an imported non-duty-paid marked special container of alcohol, for export.

Return of duty-paid alcohol

136. If packaged alcohol that has been removed from an excise warehouse for entry into the duty-paid market is returned to that warehouse under prescribed conditions, the alcohol may be entered into the warehouse as non-duty-paid packaged alcohol.

Return of non-duty-paid alcohol

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137. If non-duty-paid packaged alcohol that has been removed from an excise warehouse in accordance with section 130 is returned to an excise warehouse under prescribed conditions, the alcohol may be entered into the warehouse as non-duty-paid packaged alcohol.

**Supplying packaged
alcohol to retail
store**

138. (1) If an excise warehouse licensee supplies packaged alcohol to a retail store from a particular premises specified in the excise warehouse licence of the licensee, the volume of packaged alcohol supplied to the store from the premises in a year shall not exceed 60% of the total volume of packaged alcohol supplied from the premises to retail stores in the year. 5

**Exception for
certain retail stores**

(2) Subsection (1) does not apply to the supply of packaged alcohol during a year from a particular premises specified in the excise warehouse licence of an alcohol licensee to a retail store of the licensee if 15

(a) the store is located at a place at which the licensee produces or packages alcohol; and

(b) not less than 90% of the volume of packaged alcohol supplied to the store from the premises in the year is in respect of alcohol that was packaged 20

(i) by the licensee, or

(ii) on behalf of the licensee, if the licensee was responsible for the alcohol immediately before it was packaged.

**Removal of special
container**

139. An alcohol licensee who has marked a special container of alcohol may remove the container from their excise warehouse if the marking on the container is removed by the licensee in the manner approved by the Minister. 25

PART 5

GENERAL PROVISIONS CONCERNING DUTY

*Fiscal Month***Licensee**

140. (1) A licensee who is required under this Act to file a return 5
shall select a fiscal month in accordance with subsection 243(2) of the
Excise Tax Act and notify the Minister of the selection in the prescribed
form and manner.

**Licensee – deemed
fiscal month**

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(2) If a licensee fails to select a fiscal month under subsection (1), the
licensee is deemed to have selected the calendar month as their fiscal
month.

Other persons

(3) A person who is not a licensee and who is required to pay duty 15
shall file a return and

(a) in the case of a person who has selected a fiscal month in
accordance with subsection 243(2) of the *Excise Tax Act*, is deemed
to have selected that fiscal month for the purposes of this Act; and

(b) in any other case, is deemed to have selected the calendar month 20
as their fiscal month.

*Returns and Payment of Duty and Other Amounts***Filing by licensee**

141. (1) Every person who is licensed under this Act shall, not later
than the last day of the first month after the fiscal month of the person 25
in which duty became payable,

(a) file a return with the Minister, in the prescribed form and manner,
for that fiscal month;

(b) calculate, in the return, the total amount of the duty payable by
the person for the fiscal month for which the return is required to be 30
filed; and

(c) pay that amount to the Receiver General.

Licensees – nil returns

(2) If during a particular month no amount is payable by a licensee on account of duty for their last preceding fiscal month the licensee shall not later than the last day of the particular month, file a return stating that fact.

Filing by other person

142. Every person who is not licensed under this Act and who is required to pay duty under this Act shall not later than the last day of the first month after the fiscal month of the person in which the duty became payable

(a) file a return with the Minister, in the prescribed form and manner, for that fiscal month;

(b) calculate, in the return, the total of the duty payable by the person for the fiscal month for which the return is required to be filed; and

(c) pay that amount to the Receiver General.

Set-off of refunds

143. If at any time a person files a return in which the person reports an amount that is required to be paid under this Act by them and the person claims a refund payable to them at that time, in the return or in another return, or in an application, filed under this Act with the return, the person is deemed to have paid at that time on account of their payment amount and the Minister is deemed to have paid at that time on account of the refund, an amount equal to the lesser of the payment amount and the amount of the refund.

Large payments

144. Every person who is required under this Act to pay duty, interest or another amount to the Receiver General shall, if the amount is \$50,000 or more, make the payment to the account of the Receiver General at

(a) a bank;

(b) an authorized foreign bank, as defined in section 2 of the *Bank Act*, that is not subject to the restrictions and requirements referred to in subsection 524(2) of that Act;

(c) a credit union;

(d) a corporation authorized under the laws of Canada or a province to carry on the business of offering its services as a trustee to the public; or

(e) a corporation authorized under the laws of Canada or a province to accept deposits from the public and that carries on the business of lending money on the security of real estate or investing in mortgages on real estate. 5

Authority for separate returns

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145. (1) A licensee who engages in one or more activities in separate branches or divisions may file an application, in the prescribed form and manner, with the Minister for authority to file separate returns and applications for refunds under this Act in respect of a branch or division specified in the application. 15

Authorization by Minister

(2) If the Minister receives an application in respect of a branch or division of a licensee and is satisfied that

(a) the branch or division can be separately identified by reference to the location of the branch or division or the nature of the activities engaged in by it, and 20

(b) separate records, books of account and accounting systems are maintained in respect of the branch or division,

the Minister may, in writing, authorize the licensee to file separate returns and applications for refunds in relation to the specified branch or division, subject to such conditions as the Minister may at any time impose. 25

Revocation of authorization

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(3) The Minister may, in writing, revoke an authorization if

(a) the licensee, in writing, requests the Minister to revoke the authorization;

(b) the licensee fails to comply with any condition imposed in respect of the authorization or any provision of this Act or the regulations; 35

(c) the Minister is no longer satisfied that the requirements of subsection (2) in respect of the licensee are met; or

(d) the Minister considers that the authorization is no longer required for the purposes for which it was originally granted, or generally for the purposes of this Act.

Notice of revocation

(4) If the Minister revokes an authorization, the Minister shall send a notice in writing of the revocation to the licensee and shall specify in the notice the effective date of the revocation.

Small amounts owing

146. (1) If at any time the total of all unpaid amounts owing by a person to the Receiver General under this Act does not exceed \$2.00, the amount owing by the person is deemed to be nil.

Small amounts payable

(2) If at any time the total of all amounts payable by the Minister to a person under this Act does not exceed \$2.00, the amount owing by the Minister is deemed to be nil, unless the amount can be applied against a liability of the person under this Act.

Meaning of "electronic filing"

147. (1) For the purposes of this section, "electronic filing" means using electronic media in a manner specified in writing by the Minister.

Application for electronic filing

(2) A person who is required under this Act to file returns with the Minister and who meets the criteria specified in writing by the Minister may file with the Minister in the prescribed form and manner an application for authorization to file the returns by way of electronic filing.

Authorization

(3) If the Minister receives an application of a person under subsection (2) and is satisfied that the person meets the criteria referred to in that subsection, the Minister may, in writing, authorize the person

to file returns by way of electronic filing, subject to any conditions that the Minister may at any time impose.

Revocation

- (4) The Minister may revoke an authorization granted to a person if
 - (a) the person, in writing, requests the Minister to revoke the authorization; 5
 - (b) the person fails to comply with any condition imposed in respect of the authorization or any provision of this Act or the regulations;
 - (c) the Minister is no longer satisfied that the criteria referred to in subsection (2) are met; or 10
 - (d) the Minister considers that the authorization is no longer required.

Notification

(5) If the Minister revokes an authorization of a person, the Minister shall notify the person in writing of the revocation and its effective date.

Deemed filing

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(6) For the purposes of this Act, if a person files a return by way of electronic filing, it is deemed to be a return in the prescribed form filed with the Minister on the day the Minister acknowledges acceptance of it.

Execution of returns, etc.

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148. A return, other than a return filed by way of electronic filing under section 147, a certificate or other document made by a person, other than an individual, under this Act or the regulations shall be signed on behalf of the person by an individual duly authorized to do so by the person or the governing body of the person. If the person is a corporation or an association or organization that has duly elected or appointed officers, the president, vice-president, secretary and treasurer, or other equivalent officers, of the corporation, association or organization, are deemed to be so duly authorized. 25 30

**Interest on amounts
not paid when
required**

149. (1) If a person fails to pay an amount to the Receiver General as and when required under this Act, the person shall pay to the Receiver General on the amount not paid interest at the prescribed rate computed for the period beginning on the first day after the day on which the amount was required to be paid and ending on the day the amount is paid.

**Payment of interest
that is compounded**

(2) If interest is compounded on a particular day on an amount that a person has failed to pay as and when required under this Act, the interest so compounded is, for the purpose of this section, deemed to be required to be paid by the person to the Receiver General at the end of the particular day, and, if the person has not paid the interest so computed by the end of the next following day, the interest shall be added to the amount at the end of the particular day.

Extension of time

150. (1) The Minister may at any time extend in writing the time required under this Act for a person to file a return or provide information.

Effect of extension

(2) If the Minister extends the time within which a return of a person shall be filed or information shall be provided,

(a) the return shall be filed, or information shall be provided, within the time as so extended;

(b) any duty payable that the person is required to report in the return shall be paid within the time so extended; and

(c) interest is payable under section 149 as if the time had not been extended.

**Waiving or reducing
interest**

151. The Minister may at any time waive or reduce any interest payable by a person under this Act.

Demand for return

152. The Minister may, on demand served personally or by registered or certified mail, require any person to file, within any reasonable time that may be stipulated in the demand, a return under this Act for any period that may be designated in the demand. 5

Refunds

Statutory recovery rights

153. Except as specifically provided in this Act, the *Customs Act*, the *Customs Tariff* or the *Financial Administration Act*, no person has a right to recover any money paid to Her Majesty as or on account of, or that has been taken into account by Her Majesty as, duty, interest or another amount payable under this Act. 10

Applications for refunds

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154. (1) An application for a refund under this Act shall be filed with the Minister in the prescribed form and manner.

Single application

(2) Only one application may be made under this Act for a refund with respect to any matter. 20

Payment if error

155. (1) If a person has paid an amount as or on account of, or that was taken into account as, duty, interest or another amount payable under this Act in circumstances in which the amount was not payable by the person, whether the amount was paid by mistake or otherwise, the Minister shall pay a refund of that amount to the person. 25

Restriction

(2) A refund in respect of an amount shall not be paid to a person to the extent that

(a) the amount was taken into account as duty for a fiscal month of the person and the Minister has assessed the person for the month under section 167; or 30

(b) the amount paid was duty, interest or another amount assessed under that section.

Application for refund

(3) A refund of an amount shall not be paid to a person unless the person files an application for the refund within two years after the day the person paid the amount.

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Restriction on refunds, etc.

156. A refund or a payment of an amount under this Act shall not be paid to a person to the extent that it can reasonably be regarded that

(a) the amount has previously been refunded, remitted, applied or paid to that person under this or any other Act of Parliament; or

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(b) the person has applied for a refund, payment or remission of the amount under any other Act of Parliament.

Restriction re trustees

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157. If a trustee is appointed under the *Bankruptcy and Insolvency Act* to act in the administration of the estate of a bankrupt, a refund or any other payment under this Act that the bankrupt was entitled to claim before the appointment shall not be paid to the bankrupt after the appointment unless all returns required under this Act to be filed for 20 fiscal months of the bankrupt ending before the appointment have been filed and all amounts required under this Act to be paid by the bankrupt in respect of those fiscal months have been paid.

Overpayment of refunds, etc.

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158. (1) If an amount is paid to, or applied to a liability of, a person as a refund or other payment under this Act and the person is not entitled to the amount or the amount paid or applied exceeds the refund or other payment to which the person is entitled, the person shall pay to the Receiver General an amount equal to the refund, payment or excess 30 on the day the amount is paid to, or applied to a liability of, the person.

Effect of reduction of refund, etc.

(2) For the purpose of subsection (1), to the extent that a refund or other payment has been paid to a person in excess of the amount to which the person was entitled and the amount of the excess has, by reason of section 156, reduced the amount of any other refund or other 35

payment to which the person would, but for the payment of the excess, be entitled, the person shall be deemed to have paid the amount of the excess to the Receiver General.

**No refund on
exported tobacco
products or alcohol**

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159. Subject to this Act, the duty paid on any tobacco product or alcohol entered into the duty-paid market shall not be refunded on the exportation of the tobacco product or alcohol.

**Re-worked or
destroyed tobacco
products**

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160. The Minister may refund to a tobacco licensee the duty paid on a tobacco product that is re-worked or destroyed by the tobacco licensee in accordance with section 40 if the licensee applies for the refund 15 within two years after the day the tobacco product is re-worked or destroyed.

**Refund of duty –
foreign duties paid,
etc.**

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161. The Minister may refund to a tobacco licensee the special duty paid by the licensee on a tobacco product if the tobacco licensee

(a) provides the Minister with evidence satisfactory to the Minister that

(i) all duties and taxes imposed on the tobacco product by the 25 national government of the country to which the tobacco product was exported have been paid, or

(ii) the tobacco product was purchased by the operator of a foreign duty free shop (as defined in subsection 52(2)) for duty-free sale by the operator in that shop; and 30

(b) applies for the refund within two years after the day the tobacco product is exported.

**Refund to P.E.I.
wholesaler**

162. (1) If a licensed wholesale vendor sells Nova Scotia cigarettes 35 or Nova Scotia tobacco sticks to a licensed retail vendor, or to a

consumer in the Province of Prince Edward Island for their personal use, the Minister may refund to the licensed wholesale vendor an amount equal to the total of

(a) \$0.00625 multiplied by the number of cigarettes sold, and

(b) \$0.004 multiplied by the number of tobacco sticks sold.

Conditions

(2) To qualify to receive a refund in respect of Nova Scotia manufactured tobacco, the licensed wholesale vendor must

(a) apply for the refund within two years after the day the manufactured tobacco is sold by the licensed wholesale vendor; and

(b) include in the application a certification by the Treasurer of the Province of Prince Edward Island that all tax payable on the manufactured tobacco under the *Health Tax Act*, R.S.P.E.I. 1988, c. H-3, has been paid.

Only one application per month

(3) Not more than one application for a refund may be made by a licensed wholesale vendor in any calendar month.

Definitions

(4) The definitions in this section and in section 57 apply in this section.

Meaning of "Nova Scotia manufactured tobacco"

"Nova Scotia manufactured tobacco" means manufactured tobacco that is marked or stamped in accordance with Part III of the *Revenue Act*, S.N.S. 1995-96, c. 17, to indicate that the manufactured tobacco is intended for retail sale in the Province of Nova Scotia.

Payment if bad debt

163. (1) If an *ad valorem* duty under section 42 has been paid by a tobacco licensee in respect of an arm's length sale of cigars and the licensee has established that any debt owing to the licensee in respect of the sale has become in whole or in part a bad debt and has accordingly written off all or part of the debt as a bad debt in the

licensee's books of account, an amount equal to the proportion of the amount of that duty that the amount of the debt written off is of the price for which the cigars were sold shall, subject to this Act, be paid to that licensee if the licensee applies for a refund of the amount in the two years after the end of the licensee's fiscal month during which the debt was so written off. 5

Recovery of payment

(2) If a tobacco licensee recovers all or any part of a debt in respect of which an amount is paid to the licensee under subsection (1) (in this subsection referred to as the "refunded amount") that licensee shall immediately pay to the Receiver General an amount equal to the proportion of the refunded amount that the amount of the debt so recovered is of the amount of the debt written off in respect of which the refunded amount was paid. 10 15

Definition of "arm's length sale"

(3) In this section, "arm's length sale" in respect of cigars means a sale of cigars by a tobacco licensee to a person with whom the licensee is dealing at arm's length at the time of the sale. 20

Refund – bulk imported spirits

164. (1) If imported bulk spirits on which special duty has been paid are returned by a licensed user to the alcohol licensee who supplied them to the licensed user, the Minister may refund the duty to the alcohol licensee who paid the duty if the licensee applies for the refund within two years after the day the spirits are returned. 25

Refund – packaged imported spirits

(2) If packaged imported spirits on which special duty has been paid are returned under prescribed conditions by a licensed user to the excise warehouse of the excise warehouse licensee who supplied them to the licensed user, the Minister may refund the duty to the excise warehouse licensee who paid the duty if the excise warehouse licensee applies for the refund within two years after the day the spirits are returned. 30 35

**Refund – alcohol
returned to
warehouse**

165. If packaged alcohol that has been removed from the excise warehouse of an excise warehouse licensee for entry into the duty-paid market is returned in accordance with section 136 to the excise warehouse of that licensee, the Minister may refund to the licensee of that warehouse the duty paid on the alcohol if the licensee applies for the refund within two years after the day the alcohol is returned. 5

**Refund – wine in
special container**

166. If a marked special container of wine is returned under prescribed conditions to the alcohol licensee or excise warehouse licensee who supplied the container, the Minister may refund, to the licensee who paid the duty, the duty on the wine remaining in the container when it is returned if the licensee 15

(a) destroys the wine in the manner approved by the Minister; and

(b) applies for the refund within two years after the day the container is returned.

Assessments

Assessments

167. (1) The Minister may assess

(a) the duty payable by a person for a fiscal month of the person; and

(b) subject to section 170, interest and any other amount payable by a person under this Act. 25

Reassessment

(2) The Minister may reassess or make an additional assessment of any duty, interest or another amount that may be assessed under subsection (1).

**Allowance of
unclaimed amounts**

(3) If, in assessing the duty, interest or other amount payable by a person for a fiscal month of the person or other amount payable by a person under this Act, the Minister determines that 30

(a) a refund would have been payable to the person if it had been claimed in an application under this Act filed on the particular day that is

(i) if the assessment is in respect of duty payable for the fiscal month, the day on which the return for the month was required to be filed, or 5

(ii) if the assessment is in respect of interest or another amount, the day on which the interest or other amount became payable by the person,

(b) the refund was not claimed by the person in an application filed before the day notice of the assessment is sent to the person, and 10

(c) the refund would be payable to the person if it were claimed in an application under this Act filed on the day notice of the assessment is sent to the person or would be disallowed if it were claimed in that application only because the period for claiming the refund expired before that day, 15

the Minister shall, unless otherwise requested by the person, apply all or part of the refund against that duty, interest or other amount that is payable as if the person had, on the particular day, paid the amount so applied on account of that duty, interest or other amount. 20

Application of overpayment

(4) If, in assessing the duty payable by a person for a fiscal month of the person, the Minister determines that there is an overpayment of duty payable for the month, unless the assessment is made in the circumstances described in paragraph 171(4)(a) or (b) after the time otherwise limited for the assessment by paragraph 171(1)(a), the Minister shall, unless otherwise requested by the person, 25

(a) apply

(i) all or part of the overpayment 30

against

(ii) any amount (in this paragraph referred to as the "outstanding amount") that, on the particular day on which the person was required to file a return for the month, the person defaulted in paying under this Act and that remains unpaid on the day notice of the assessment is sent to the person, 35

as if the person had, on the particular day, paid the amount so applied on account of the outstanding amount;

(b) apply

(i) all or part of the overpayment that was not applied under paragraph (a) together with interest on the overpayment at the prescribed rate, computed for the period beginning on the day that is 30 days after the latest of 5

(A) the particular day,

(B) the day on which the return for the fiscal month was filed, and 10

(C) in the case of an overpayment that is attributable to a payment made on a day subsequent to the days referred to in clauses (A) and (B), that subsequent day,

and ending on the day on which the person defaulted in paying the outstanding amount referred to in subparagraph (ii) 15

against

(ii) any amount (in this paragraph referred to as the "outstanding amount") that, on a day (in this paragraph referred to as the "later day") after the particular day, the person defaulted in paying under this Act and that remains unpaid on the day notice of the assessment is sent to the person, 20

as if the person had, on the later day, paid the amount and interest so applied on account of the outstanding amount; and

(c) refund to the person the part of the overpayment that was not applied under paragraphs (a) and (b) together with interest on the refund at the prescribed rate, computed for the period beginning on the day that is 30 days after the latest of 25

(i) the particular day,

(ii) the day on which the return for the fiscal month was filed, and

(iii) in the case of an overpayment that is attributable to a payment made on a day subsequent to the days referred to in subparagraphs (i) and (ii), that subsequent day, 30

and ending on the day the refund is paid to the person.

Application of payment

(5) If, in assessing the duty payable by a person for a fiscal month of the person or an amount (in this subsection referred to as the "overdue amount") payable by a person under this Act, all or part of a refund is not applied under subsection (3) against that duty payable or overdue amount, except if the assessment is made in the circumstances described in paragraph 171(4)(a) or (b) after the time otherwise limited for the assessment by paragraph 171(1)(a), the Minister shall, unless otherwise requested by the person,

(a) apply

(i) all or part of the refund that was not applied under subsection (3)

against

(ii) any other amount (in this paragraph referred to as the "outstanding amount") that, on the particular day that is

(A) if the assessment is in respect of duty payable for the fiscal month, the day on which the return for the month was required to be filed, or

(B) if the assessment is in respect of an overdue amount, the day on which the overdue amount became payable by the person,

the person defaulted in paying under this Act and that remains unpaid on the day notice of the assessment is sent to the person,

as if the person had, on the particular day, paid the refund so applied on account of the outstanding amount;

(b) apply

(i) all or part of the refund that was not applied under subsection (3) or paragraph (a) together with interest on the refund at the prescribed rate, computed for the period beginning on the day that is 30 days after the later of

(A) the particular day, and

(B) if the assessment is in respect of duty payable for the fiscal month, the day on which the return for the month was filed,

and ending on the day on which the person defaulted in paying the outstanding amount referred to in subparagraph (ii)

against

(ii) any amount (in this paragraph referred to as the "outstanding amount") that, on a day (in this paragraph referred to as the "later day") after the particular day, the person defaulted in paying under this Act and that remains unpaid on the day notice of the assessment is sent to the person, 5

as if the person had, on the later day, paid the refund and interest so applied on account of the outstanding amount; and 10

(c) refund to the person the part of the refund that was not applied under any of subsection (3) and paragraphs (a) and (b) together with interest on the refund at the prescribed rate, computed for the period beginning on the day that is 30 days after the later of

(i) the particular day, and 15

(ii) if the assessment is in respect of duty payable for the fiscal month, the day on which the return for the month was filed,

and ending on the day the refund is paid to the person.

Limitation on refunding overpayments

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(6) An overpayment of duty payable for a fiscal month of a person and interest on the overpayment shall not be applied under paragraph (4)(b) or refunded under paragraph (4)(c) unless the person has filed all returns that the person was required to file under this Act with the Minister before the day notice of the assessment is sent to the person. 25

Limitation

(7) A refund or a part of the refund that was not applied under subsection (3) and interest on the refund under paragraphs (5)(b) and (c) 30

(a) shall not be applied under paragraph (5)(b) against an amount (in this paragraph referred to as the "outstanding amount") that is payable by a person unless the refund would have been payable to the person as a refund if the person had claimed it in an application under this Act filed on the day the person defaulted in paying the outstanding amount and, in the case of a payment under section 155, if that 35

section allowed the person to claim the payment within four years after the person paid the amount in respect of which the payment would be so payable; and

(b) shall not be refunded under paragraph (5)(c) unless

(i) the refund would have been payable to the person as a refund 5
if the person had claimed it in an application under this Act filed on the day notice of the assessment is sent to the person, and

(ii) the person has filed all returns that the person was required to file under this Act with the Minister before the day notice of the assessment is sent to the person. 10

Deemed claim or application

(8) If, in assessing any duty, interest or other amount payable by a person under this Act, the Minister applies or refunds an amount under subsection (3), (4) or (5), 15

(a) the person is deemed to have claimed the amount in a return or application filed under this Act; and

(b) to the extent that an amount is applied against any duty, interest or other amount payable by the person, the Minister is deemed to have refunded or paid the amount to the person and the person is 20
deemed to have paid the duty, interest or other amount payable against which it was applied.

Refund on reassessment

(9) If a person has paid an amount on account of duty, interest or 25
other amount assessed under this section and the amount paid exceeds the amount determined on reassessment to have been payable by the person, the Minister shall refund to the person the amount of the excess, together with interest on the amount at the prescribed rate for the period beginning on the day the amount was paid by the person and ending on 30
the day the refund is paid.

Meaning of "overpayment of duty payable"

(10) In this section, "overpayment of duty payable" of a person for 35
a fiscal month of the person means the amount, if any, by which the

total of all amounts paid by the person on account of duty payable for the month exceeds the total of

(a) the duty payable for the month, and

(b) all amounts paid to the person under this Act as a refund for the month.

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Assessment of refund

168. (1) On receipt of an application made by a person for a refund under this Act, the Minister shall, with all due dispatch, consider the application and assess the amount of the refund, if any, payable to the person.

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Reassessment

(2) The Minister may reassess or make an additional assessment of the amount of a refund despite any previous assessment of the amount of the refund.

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Payment

(3) If on assessment under this section the Minister determines that a refund is payable to a person, the Minister shall pay the refund to the person.

Restriction

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(4) A refund shall not be paid to the person until all returns required to be filed under this Act by the person for the fiscal month in which the application for the refund was made and all preceding fiscal months have been filed with the Minister.

Interest

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(5) If a refund is paid to a person, the Minister shall pay interest at the prescribed rate to the person on the refund for the period beginning on the day that is 30 days after the day the application in which the refund is filed with the Minister and ending on the day the refund is paid.

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Assessment of overpayment

169. The Minister may assess, reassess or make an additional assessment of an amount payable by a person under section 158, despite any previous assessment of the amount.

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No assessment for penalty

170. No assessment shall be made for any penalty imposed under section 232.

Limitation period for assessments

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171. (1) Subject to subsections (3) to (7), no assessment shall be made for any duty, interest or other amount payable under this Act

(a) in the case of an assessment of the duty payable for a fiscal month, more than four years after the later of the day on which the return for the month was required to be filed and the day on which the return was filed;

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(b) in the case of an assessment for any other amount payable under this Act, more than four years after the amount became payable; or

(c) in the case of an assessment for an amount for which a trustee in bankruptcy became liable under section 193, after the earlier of

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(i) 90 days after the day the return on which the assessment is based is filed with, or other evidence of the facts on which the assessment is based comes to the attention of, the Minister, and

(ii) the expiry of the period referred to in paragraph (a) or (b) whichever applies in the circumstances.

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Limitation re refund assessment

(2) Subject to subsections (3) to (6), an assessment of the amount of a refund or any other payment that may be obtained under this Act may be made at any time but a reassessment or additional assessment of an amount paid or applied as a refund under this Act or of an amount paid as interest in respect of an amount paid or applied as a refund under this Act shall not be made more than four years after the day the application for the amount was filed in accordance with this Act.

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Exception

(3) Subsections (1) and (2) do not apply to a reassessment made to give effect to a decision on an objection or appeal.

**No limitation on
assessment if fraud,
etc.**

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(4) An assessment in respect of any matter may be made at any time if the person to be assessed has, in respect of that matter,

(a) made a misrepresentation that is attributable to their neglect, carelessness or wilful default;

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(b) committed fraud

(i) in making or filing a return under this Act,

(ii) in making or filing an application for a refund under this Act, or

(iii) in supplying or failing to supply any information under this Act; or

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(c) filed a waiver under subsection (7) that is in effect at that time.

**No limitation if
payment for another
fiscal month**

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(5) If, in making an assessment, the Minister determines that a person has paid in respect of any matter an amount as or on account of duty payable for a fiscal month of the person that was payable for another fiscal month of the person, the Minister may at any time make an assessment for that other month in respect of that matter.

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**Reduction of duty –
fiscal month**

(6) If the result of a reassessment on an objection to, or a decision on an appeal from, an assessment is to reduce the amount of duty payable by a person and, by reason of the reduction, any refund or other payment claimed by the person for a fiscal month, or in an application for a refund or other payment, should be decreased, the Minister may at any time assess or reassess that fiscal month or that application only for the purpose of taking the reduction of duty into account in respect of the refund or other payment.

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Waiver

(7) Any person may, within the time otherwise limited by subsection (1) or (2) for an assessment, waive the application of subsection (1) or (2) by filing with the Minister a waiver in the prescribed form and manner specifying the matter in respect of which the person waives the application of that subsection. 5

Revoking waiver

(8) Any person who files a waiver under subsection (7) may revoke it on six months notice to the Minister by filing with the Minister a notice of revocation of the waiver in the prescribed form and manner. 10

Minister not bound

172. (1) The Minister is not bound by any return, application or information provided by or on behalf of a person and may make an assessment, notwithstanding any return, application or information so provided or that no return, application or information has been provided. 15

Liability not affected

(2) Liability to pay any duty, interest or other amount is not affected by an incorrect or incomplete assessment or by the fact that no assessment has been made.

Assessment valid and binding

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(3) An assessment, subject to being vacated on an objection or appeal under this Act and subject to a reassessment, is deemed to be valid and binding.

Binding effect – unincorporated body

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(4) If a person (referred to in this subsection as the "body") that is not an individual or a corporation is assessed in respect of any matter,

(a) the assessment is not invalid only because one or more other persons (each of which is referred to in this subsection as a "representative") who are liable for obligations of the body did not receive a notice of the assessment; 30

(b) the assessment is binding on each representative of the body, subject to a reassessment of the body and the rights of the body to object to or appeal from the assessment under this Act; and 35

(c) an assessment of a representative in respect of the same matter is binding on the representative subject only to a reassessment of the representative, and the rights of the representative to object to or appeal from the assessment of the representative under this Act on the grounds that the representative is not a person who is liable to pay an amount to which the assessment of the body relates, the body has been reassessed in respect of that matter or the assessment of the body in respect of that matter has been vacated. 5

Assessment deemed valid

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(5) Subject to being reassessed or vacated as a result of an objection or appeal under this Act, an assessment is deemed to be valid and binding, despite any error, defect or omission in the assessment or in any proceeding under this Act relating to it.

Irregularities

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(6) An appeal from an assessment shall not be allowed by reason only of an irregularity, informality, omission or error on the part of any person in the observation of a directory provision of this Act.

Notice of assessment

173. (1) After making an assessment, the Minister shall send to the person assessed a notice of the assessment. 20

Scope of notice

(2) A notice of assessment may include assessments in respect of any number or combination of fiscal months, refunds or amounts payable under this Act. 25

Objections to Assessment

Objection to assessment

174. (1) Any person who has been assessed and who objects to the assessment may, within 90 days after the day notice of the assessment is sent to the person, file with the Minister a notice of objection in the prescribed form and manner setting out the reasons for the objection and all relevant facts. 30

Issue to be decided

(2) A notice of objection shall

(a) reasonably describe each issue to be decided;

(b) specify in respect of each issue the relief sought, expressed as the change in any amount that is relevant for the purposes of the assessment; and 5

(c) provide the facts and reasons relied on by the person in respect of each issue.

Late compliance

(3) Despite subsection (2), if a notice of objection does not include the information required by paragraph (2)(b) or (c) in respect of an issue to be decided that is described in the notice, the Minister may, in writing, request the person to provide the information, and those paragraphs are deemed to be complied with in respect of the issue if, within 60 days after the request is made, the person submits the information in writing to the Minister. 10 15

Limitation on objections

(4) Despite subsection (1), if a person has filed a notice of objection to an assessment (in this subsection referred to as the "earlier assessment") and the Minister makes a particular assessment under subsection (8) pursuant to the notice of objection, unless the earlier assessment was made in accordance with an order of a court vacating, varying or restoring an assessment or referring an assessment back to the Minister for reconsideration and reassessment, the person may object to the particular assessment in respect of an issue 20 25

(a) only if the person complied with subsection (2) in the notice with respect to that issue; and

(b) only with respect to the relief sought in respect of that issue as specified by the person in the notice. 30

Application of subsection (4)

(5) If a person has filed a notice of objection to an assessment (in this subsection referred to as the "earlier assessment") and the Minister makes a particular assessment under subsection (8) pursuant to the notice of objection, subsection (4) does not limit the right of the person 35

to object to the particular assessment in respect of an issue that was part of the particular assessment and not part of the earlier assessment.

Limitation on objections

(6) Despite subsection (1), no objection may be made by a person in respect of an issue for which the right of objection has been waived in writing by the person. 5

Acceptance of objection

(7) The Minister may accept a notice of objection notwithstanding that it was not filed in the prescribed form and manner. 10

Consideration of objection

(8) On receipt of a notice of objection, the Minister shall, with all due dispatch, reconsider the assessment and vacate or confirm it or make a reassessment. 15

Waiving reconsideration

(9) If, in a notice of objection, a person who wishes to appeal directly to the Tax Court requests the Minister not to reconsider the assessment objected to, the Minister may confirm the assessment without reconsideration. 20

Notice of decision

(10) After reconsidering an assessment under subsection (8) or confirming an assessment under subsection (9), the Minister shall send to the person objecting notice of the Minister's decision by registered or certified mail. 25

Appeal

Appeal to Tax Court

175. If a person files a notice of objection to an assessment and the Minister sends the person a notice of a reassessment or an additional assessment, in respect of any matter dealt with in the notice of objection, the person may, within 90 days after the day the notice of reassessment or additional assessment was sent by the Minister, 30

(a) appeal from the reassessment or additional assessment to the Tax Court; or

(b) if an appeal has already been instituted in respect of the matter, amend the appeal by joining to it an appeal in respect of the reassessment or additional assessment, in the manner and on any terms that the Tax Court directs. 5

Extension of time by Minister

176. (1) If no objection to an assessment is filed under section 174 within the time limited under this Act, a person may make an application to the Minister to extend the time for filing a notice of objection and the Minister may grant the application. 10

Contents of application

(2) An application must set out the reasons why the notice of objection was not filed within the time limited by this Act for doing so. 15

How application made

(3) An application must be made by sending to the Deputy Minister by registered mail two copies of the application together with two copies of the notice of objection. 20

Defect in application

(4) The Minister may accept an application even though it was not made in accordance with subsection (3).

Duties of Minister

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(5) On receipt of an application, the Minister shall, with all due dispatch, consider the application and grant or refuse it, and shall notify the person of the decision by registered or certified mail.

Date of objection if application granted

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(6) If an application is granted, the notice of objection shall be considered to have been filed on the day the decision of the Minister is mailed to the person.

Conditions – grant of application

(7) No application shall be granted under this section unless

(a) the application is made within one year after the expiry of the time limited by this Act for objecting; and 5

(b) the person demonstrates that

(i) within the time limited by this Act for objecting the person,

(A) was unable to act or to give a mandate to act in their name, or

(B) had a *bona fide* intention to object to the assessment, 10

(ii) given the reasons set out in the application and the circumstances of the case, it would be just and equitable to grant the application, and

(iii) the application was made as soon as circumstances permitted it to be made. 15

Extension of time by Tax Court

177. (1) A person who has made an application under section 176 may apply to the Tax Court to have the application granted after either

(a) the Minister has refused the application; or 20

(b) 90 days have elapsed after service of the application and the Minister has not notified the person of the Minister's decision.

When application may not be made

(2) No application may be made after the expiry of 30 days after the 25
day the decision referred to in subsection (1) has been mailed to the person under subsection 176(5).

How application made

(3) An application must be made by filing with the Registrar of the 30
Tax Court or by sending to the Registrar by registered mail three copies of the documents filed under subsection 176(3).

Copy to Deputy Minister

(4) The Tax Court must send a copy of each application to the Deputy Minister.

Powers of Court

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(5) The Tax Court may dispose of an application by dismissing or granting it and in granting it, the Court may impose any terms that it considers just or order that the notice of objection be deemed to be a valid objection as of the date of the order.

When application to be granted

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(6) No application shall be granted under this section unless

(a) the application was made under subsection 176(1) within one year after the expiry of the time limited by this Act for objecting; and

(b) the person demonstrates that

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(i) within the time limited by this Act for objecting the person,

(A) was unable to act or to give a mandate to act in their name, or

(B) had a *bona fide* intention to object to the assessment,

(ii) given the reasons set out in the application and the 20 circumstances of the case, it would be just and equitable to grant the application, and

(iii) the application was made under subsection 176(1) as soon as 30 circumstances permitted it to be made.

Extension of time to appeal

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178. (1) If no appeal to the Tax Court under section 179 has been instituted within the time limited by that section for doing so, a person may make an application to the Tax Court for an order extending the time within which an appeal may be instituted, and the Court may make 30 an order extending the time for appealing and may impose any terms that it considers just.

Contents of application

(2) An application must set out the reasons why the appeal was not instituted within the time limited by this Act for doing so.

How application made

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(3) An application must be made by filing with the Registrar of the Tax Court or by sending to the Registrar by registered mail three copies of the application together with three copies of the notice of appeal.

Copy to Deputy Attorney General of Canada

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(4) The Tax Court must send a copy of the application to the office of the Deputy Attorney General of Canada.

When order to be made

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(5) No order shall be made under this section unless

(a) the application is made within one year after the expiry of the time limited by this Act for appealing; and

(b) the person demonstrates that

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(i) within the time limited by this Act for appealing the person,

(A) was unable to act or to give a mandate to act in their name, or

(B) had a *bona fide* intention to appeal,

(ii) given the reasons set out in the application and the 25
circumstances of the case, it would be just and equitable to grant
the application,

(iii) the application was made as soon as circumstances permitted
it to be made, and

(iv) there are reasonable grounds for appealing from the 30
assessment.

Appeal to Tax Court

179. (1) Subject to subsection (2), a person who has filed a notice of objection to an assessment may appeal to the Tax Court to have the assessment vacated or a reassessment made after either

- (a) the Minister has confirmed the assessment or has reassessed; or 5
- (b) 180 days have elapsed after the filing of the notice of objection and the Minister has not notified the person that the Minister has vacated or confirmed the assessment or has reassessed.

No appeal

(2) No appeal under subsection (1) may be instituted after the expiry 10 of 90 days after the day notice that the Minister has reassessed or confirmed the assessment is sent to the person under subsection 174(10).

Limitation on appeals to the Tax Court

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180. (1) Despite sections 175 and 179, if a person has filed a notice of objection to an assessment, the person may appeal to the Tax Court to have the assessment vacated, or a reassessment made, only with respect to

- (a) an issue in respect of which the person has complied with 20 subsection 174(2) in the notice and only with respect to the relief sought in respect of the issue as specified by the person in the notice; or
- (b) an issue described in subsection 174(5) if the person was not required to file a notice of objection to the assessment that gave rise 25 to the issue.

No appeal if waiver

(2) Despite sections 175 and 179, a person may not appeal to the Tax Court to have an assessment vacated or varied in respect of an issue for which the right of objection or appeal has been waived in writing by the 30 person.

Institution of appeals

181. An appeal to the Tax Court under this Act, other than one referred to in section 18.3001 of the *Tax Court of Canada Act*, shall be 35

instituted in the manner set out in that Act or in any rules made under that Act.

**Notice to Deputy
Minister**

182. (1) Where an appeal is made to the Tax Court under section 18.3001 of the *Tax Court of Canada Act*, the Court shall immediately send a copy of the notice of appeal to the Deputy Minister. 5

**Notice, etc.,
forwarded to Tax
Court**

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(2) Immediately after receiving notice of an appeal, the Deputy Minister shall forward to the Tax Court and the appellant copies of all returns, applications, notices of assessment, notices of objection and notifications, if any, that are relevant to the appeal and, on being so forwarded, those copies shall form part of the record before the Tax 15 Court in an appeal under section 18.3001 of the *Tax Court of Canada Act* and are evidence of the existence of the documents and of the making of the statements contained in them.

Disposition of appeal

183. The Tax Court may dispose of an appeal from an assessment by 20

(a) dismissing it; or

(b) allowing it and

(i) vacating the assessment, or

(ii) referring the assessment back to the Minister for reconsideration and reassessment. 25

**References to Tax
Court**

184. (1) If the Minister and another person agree in writing that a question arising under this Act, in respect of any assessment or proposed assessment, should be determined by the Tax Court, that question shall 30 be determined by that Court.

Time during consideration not to count

(2) For the purpose of making an assessment of a person who agreed in writing to the determination of a question, serving a notice of objection to an assessment or instituting an appeal from an assessment, the time between the day proceedings are instituted in the Tax Court to have a question determined and the day the question is finally determined shall not be counted in the computation of 5

(a) the four-year periods referred to in section 171; 10

(b) the time for service of a notice of objection to an assessment under section 174; or

(c) the time within which an appeal may be instituted under section 179.

Reference of common questions to Tax Court

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185. (1) If the Minister is of the opinion that a question arising out of one and the same transaction or occurrence or series of transactions or occurrences is common to assessments or proposed assessments in respect of two or more persons, the Minister may apply to the Tax Court for a determination of the question. 20

Contents of application

(2) An application shall set out 25

(a) the question in respect of which the Minister requests a determination;

(b) the names of the persons that the Minister seeks to have bound by the determination of the question; and

(c) the facts and reasons on which the Minister relies and on which the Minister based or intends to base assessments of each person named in the application. 30

Service

(3) A copy of the application shall be served by the Minister on each of the persons named in it and on any other person who, in the opinion 35

of the Tax Court, is likely to be affected by the determination of the question.

**Determination by
Tax Court of
question**

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(4) If the Tax Court is satisfied that a determination of a question set out in an application will affect assessments or proposed assessments in respect of two or more persons who have been served with a copy of the application and who are named in an order of the Tax Court under this subsection, it may

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(a) if none of the persons so named has appealed from such an assessment, proceed to determine the question in any manner that it considers appropriate; or

(b) if one or more of the persons so named has or have appealed, make any order joining a party or parties to that or those appeals that it considers appropriate and proceed to determine the question.

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**Determination final
and conclusive**

(5) Subject to subsection (6), if a question set out in an application is determined by the Tax Court, the determination is final and conclusive for the purposes of any assessments of persons named by the Court under subsection (4).

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Appeal

(6) If a question set out in an application is determined by the Tax Court, the Minister or any of the persons who have been served with a copy of the application and who are named in an order of the Court under subsection (4) may, in accordance with the provisions of this Act, the *Tax Court of Canada Act* or the *Federal Court Act*, as they relate to appeals from or applications for judicial review of decisions of the Tax Court, appeal from the determination.

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Parties to appeal

(7) The parties who are bound by a determination are parties to any appeal from the determination.

Time during consideration not counted

(8) For the purpose of making an assessment of the person, serving a notice of objection to an assessment or instituting an appeal from an assessment, the periods described in subsection (9) shall not be counted in the computation of 5

(a) the four-year periods referred to in section 171,

(b) the time for service of a notice of objection to an assessment under section 174, or 10

(c) the time within which an appeal may be instituted under section 179.

Excluded periods

(9) The period that is not to be counted in the computation of the periods and time described in paragraphs (8)(a) to (c) is the time 15 between the day an application that is made under this section is served on a person under subsection (3) and

(a) in the case of a person named in an order of the Tax Court under subsection (4), the day the determination becomes final and conclusive and not subject to any appeal, or 20

(b) in the case of any other person, the day the person is served with notice that the person has not been named in an order of the Tax Court under subsection (4).

Records and Information

Keeping records – general

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186. (1) Every licensee or registrant, every person who is required under this Act to file a return and every person who makes an application for a refund that may be obtained under this Act shall keep records in English or in French, in Canada or at any other place and on 30 any terms and conditions that the Minister may specify in writing, in the form and containing the information that will enable the determination of the person's liabilities and obligations under this Act or the amount of any refund to which the person is entitled.

Keeping records – carriers

(2) Every person who transports non-duty-paid packaged alcohol or tobacco products that are not stamped with tobacco stamps shall keep records in English or in French, in Canada or at any other place and on any terms and conditions that the Minister may specify in writing, in the form and containing the information that the Minister may specify in writing. 5

Inadequate records

(3) If a person fails to keep adequate records for the purposes of this Act, the Minister may, in writing, require the person to keep any records that the Minister may specify and the person shall keep the records specified by the Minister. 10

Period for retention

(4) Every person who is required to keep records shall retain them until the expiry of six years after the end of the year to which they relate or for any other period that may be prescribed. 15

Objection or appeal

187. (1) If a person who is required under this Act to keep records serves a notice of objection or is a party to an appeal or reference under this Act, the person shall retain, until the objection, appeal or reference and any appeal from it is finally disposed of, every record that pertains to the subject-matter of the objection, appeal or reference. 20

Demand by Minister

(2) If the Minister is of the opinion that it is necessary for the administration or enforcement of this Act, the Minister may, by a demand served personally or by registered or certified mail, require any person required under this Act to keep records to retain those records for any period that is specified in the demand and the person shall comply with the demand. 25 30

Permission for earlier disposal

(3) A person who is required under this Act to keep records may dispose of them before the expiry of the period in respect of which they are required to be kept if written permission for their disposal is given by the Minister. 35

Provincial sales records

188. Every person who is authorized under a statute of the Province of Ontario, Quebec, Nova Scotia, New Brunswick or Prince Edward Island to sell manufactured tobacco in the province to a purchaser who is authorized under a statute of the province to retail manufactured tobacco in the province shall, at all reasonable times, make the person's records available to the Minister for any purpose relating to the administration or enforcement of this Act and give the Minister every facility necessary to inspect the records for that purpose.

Requirement to provide records or information

189. (1) Despite any other provision of this Act, the Minister may, subject to subsection (2), for any purpose related to the administration or enforcement of this Act, by notice served personally or by registered or certified mail, require any person to provide the Minister, within any reasonable time that is stipulated in the notice, with

(a) any information or additional information, including a return under this Act; or

(b) any record.

Unnamed persons

(2) The Minister shall not impose on any person (in this section referred to as a "third party") a requirement to provide information or any record relating to one or more unnamed persons unless the Minister first obtains the authorization of a judge under subsection (3).

Judicial authorization

(3) On *ex parte* application by the Minister, a judge may, subject to any conditions that the judge considers appropriate, authorize the Minister to impose on a third party a requirement relating to an unnamed person or more than one unnamed person (in this section referred to as the "group") if the judge is satisfied by information on oath that

(a) the person or group is ascertainable; and

(b) the requirement is made to verify compliance by the person or persons in the group with any duty or obligation under this Act.

Service of authorization

(4) If an authorization is granted, it shall be served together with the notice referred to in subsection (1).

Review of authorization

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(5) If an authorization is granted, a third party on whom a notice is served may, within 15 days after the service of the notice, apply to the judge who granted the authorization or, if that judge is unable to act, to another judge of the same court for a review of the authorization.

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Powers on review

(6) On hearing an application under subsection (5), a judge may

(a) cancel the authorization previously granted if the judge is not then satisfied that the conditions in paragraphs (3)(a) and (b) have been met; or

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(b) confirm or vary the authorization if the judge is satisfied that those conditions have been met.

Meaning of "foreign-based information or record"

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190. (1) In this section, "foreign-based information or record" means any information or record that is available or located outside Canada and that may be relevant to the administration or enforcement of this Act.

Requirement to provide foreign-based information

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(2) Despite any other provision of this Act, the Minister may, by notice served personally or by registered or certified mail, require a person resident in Canada or a non-resident person who carries on business in Canada to provide any foreign-based information or record.

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Notice

(3) The notice shall set out

(a) a reasonable period of not less than 90 days for the provision of the information or record;

(b) a description of the information or record being sought; and 5

(c) the consequences under subsection (8) to the person of the failure to provide the information or record being sought within the period set out in the notice.

**Review of foreign
information
requirement**

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(4) The person on whom a notice of a requirement is served may, within 90 days after the service of the notice, apply to a judge for a review of the requirement.

Powers on review

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(5) On hearing an application in respect of a requirement, a judge may

(a) confirm the requirement;

(b) vary the requirement if satisfied that it is appropriate in the circumstances; or 20

(c) set aside the requirement if satisfied that it is unreasonable.

**Requirement not
unreasonable**

(6) For the purposes of subsection (5), a requirement to provide information or a record shall not be considered to be unreasonable 25 because the information or record is under the control of or available to a non-resident person that is not controlled by the person served with the notice of the requirement if that person is related to the non-resident person.

**Time during
consideration not to
count**

(7) The period between the day an application for the review of a requirement is made and the day the review is decided shall not be counted in the computation of

(a) the period set out in the notice of the requirement; and

(b) the period within which an assessment may be made under section 167 or 168.

**Consequence of
failure**

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(8) If a person fails to comply substantially with a notice served under subsection (2) and the notice is not set aside under subsection (5), any court having jurisdiction in a civil proceeding relating to the administration or enforcement of this Act shall, on the motion of the Minister, prohibit the introduction by that person of any foreign-based information or record described in that notice.

Definitions

191. (1) The definitions in this subsection apply in this section.

"custodian"
« gardien »

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"custodian" means a person in whose custody a package is placed under subsection (3).

"lawyer"
« avocat »

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"lawyer" means, in the Province of Quebec, an advocate, lawyer or notary and, in any other province, a barrister or solicitor.

**"solicitor-client
privilege"**
**« privilège des
communications
entre client et
avocat »**

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"solicitor-client privilege" means the right, if any, that a person has in a superior court in the province in which the matter arises to refuse to

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disclose an oral or documentary communication on the ground that the communication is one passing between the person and their lawyer in professional confidence, except that, for the purposes of this section, an accounting record of a lawyer, including any supporting invoice, voucher or cheque, is deemed not to be such a communication.

Solicitor-client privilege defence

(2) If a lawyer is prosecuted for failure to comply with a requirement under section 189 with respect to information or a record, the lawyer shall be acquitted if the lawyer establishes to the satisfaction of the court that the lawyer

(a) believed on reasonable grounds that a client of the lawyer had a solicitor-client privilege in respect of the information or record; and

(b) communicated to the Minister or an authorized person the lawyer's refusal to comply with the requirement, together with a claim that a named client of the lawyer had a solicitor-client privilege in respect of the information or record.

Seizure if privilege claimed

(3) If, under this Act, an authorized person is about to seize a record in the possession of a lawyer and the lawyer claims that a named client of the lawyer has a solicitor-client privilege in respect of the record, the authorized person shall, without inspecting, examining or making copies of the record,

(a) seize the record and place it, together with any other record in respect of which the lawyer at the same time makes the same claim on behalf of the same client, in a package and suitably seal and identify the package; and

(b) place the package in the custody of the sheriff of the district or county in which the seizure was made or, if the authorized person and the lawyer agree in writing on a person to act as custodian, in the custody of that person.

Retention if privilege claimed

(4) If, under section 189 or 236, an authorized person is about to inspect or examine a record in the possession of a lawyer and the lawyer claims that a named client of the lawyer has a solicitor-client privilege

in respect of the record, the authorized person shall not inspect or examine the record and the lawyer shall

(a) place the record, together with any other record in respect of which the lawyer at the same time makes the same claim on behalf of the same client, in a package and suitably seal and identify the package or, if the authorized person and the lawyer agree, allow the pages of the record to be initialled and numbered or otherwise suitably identified; and 5

(b) retain it and ensure that it is preserved until it is produced to a judge as required under this section and an order is issued under this section in respect of the record. 10

Application to judge

(5) If a record is seized and placed in custody or is retained, the client, or the lawyer on behalf of the client, may

(a) within 14 days after the day the record was placed in custody or began to be retained apply, on three clear days notice of motion to the Deputy Attorney General of Canada, to a judge for an order 15

(i) fixing a day, not later than 21 days after the date of the order, and a place for the determination of the question whether the client has a solicitor-client privilege in respect of the record, and 20

(ii) requiring the production of the record to the judge at that time and place;

(b) serve a copy of the order on the Deputy Attorney General of Canada and, if applicable, on the custodian within six days after the day it was made and, within the same time, pay to the custodian the estimated expenses of transporting the record to and from the place of hearing and of safeguarding it; and 25

(c) if the client or lawyer has proceeded as authorized by paragraph (b), apply at the appointed time and place for an order determining the question. 30

Disposition of application

(6) An application made under paragraph (5)(c) shall be heard *in camera* and, on the application, the judge

(a) may, if the judge considers it necessary to determine the question, inspect the record, and if the judge does so, the judge shall ensure that it is repackaged and resealed; and

(b) shall decide the matter summarily, and if the judge is of the opinion that the client

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(i) has a solicitor-client privilege in respect of the record, the judge shall order the release of the record to the lawyer, or

(ii) does not have a solicitor-client privilege in respect of the record, the judge shall deliver concise reasons in which the record shall be identified without divulging any of its details and order 10 that

(A) the custodian deliver the record to the authorized person or some other person designated by the Deputy Minister, in the case of a record that was seized and placed in custody, or

(B) the lawyer make the record available for inspection or 15 examination by the authorized person or some other person designated by the Deputy Minister, in the case of a record that was retained.

Order on application

(7) If a record is seized and placed in custody or is retained and a 20 judge, on the application of the Attorney General of Canada, is satisfied that neither the client nor the lawyer has made an application under paragraph (5)(a) or, having made the application, that neither the client nor the lawyer has made an application under paragraph (5)(c), the judge shall order that

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(a) the custodian deliver the record to the authorized person or some other person designated by the Deputy Minister, in the case of a record that was seized and placed in custody; or

(b) the lawyer make the record available for inspection or 30 examination by the authorized person or some other person designated by the Deputy Minister, in the case of a record that was retained.

Delivery by custodian

(8) The custodian shall deliver the record

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(a) to the lawyer

(i) in accordance with a consent executed by the authorized person or by or on behalf of the Deputy Attorney General of Canada or the Deputy Minister, or

(ii) in accordance with an order of a judge under this section; or

(b) to the authorized person or some other person designated by the Deputy Minister,

(i) in accordance with a consent executed by the lawyer or the client, or

(ii) in accordance with an order of a judge under this section.

Continuation by another judge

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(9) If the judge to whom an application is made under paragraph (5)(a) cannot for any reason act or continue to act in the application under paragraph (5)(c), the application under paragraph (5)(c) may be made to another judge of the same court.

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Costs

(10) No costs may be awarded on the disposition of any application under this section.

Directions

(11) If a question arises as to the course to be followed in connection with anything done or being done under this section, other than subsection (2), (3) or (4), and there is no direction in this section with respect to the matter, a judge may give any direction with regard to the matter that in the judge's opinion is most likely to carry out the object of this section of allowing solicitor-client privilege for proper purposes.

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Prohibition

(12) The custodian shall not deliver a record to any person except in accordance with an order of a judge or a consent under this section or except to any official or servant of the custodian for the purpose of safeguarding the record.

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Opportunity to make claim to be provided

(13) No authorized person shall inspect, examine or seize a record in the possession of a lawyer without giving the lawyer a reasonable opportunity to make a claim under this section. 5

Copies

(14) At any time while a record is in the custody of a custodian under this section, a judge may, on *ex parte* application of the lawyer, by order, authorize the lawyer to examine or make a copy of the record in the presence of the custodian or the judge, which order shall contain any provisions that may be necessary to ensure that the record is repackaged and that the package is resealed without alteration or damage. 10

Waiver of privilege

(15) If, for the purpose of subsection (2), (3) or (4), a lawyer makes a claim that a named client of the lawyer has a solicitor-client privilege in respect of information or a record, the lawyer shall at the same time communicate to the Minister or to a person duly authorized to act for the Minister the address of the client last known to the lawyer so that the Minister may endeavour to advise the client of the claim of privilege that has been made on the client's behalf and give the client an opportunity, if it is practicable within the time limited by this section, to waive the claim of privilege before the matter is to be decided by a judge or other tribunal. 20

Compliance

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(16) No person shall hinder, molest or interfere with any person doing anything that the person is authorized to do under this section or prevent or attempt to prevent any person from doing that thing and, despite any other Act or law, every person shall, unless the person is unable to do so, do everything that the person is required to do under this section. 30

Definitions applicable to confidentiality provisions

192. (1) The definitions in this subsection apply in this section. 35

"business number"« *numéro*

d'entreprise »

"business number" means the number (other than a Social Insurance Number) used by the Minister to identify

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(a) a licensee or a registrant for the purposes of this Act; or

(b) an applicant for a refund under this Act.

"confidential information"« *renseignement**confidentiel* »

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"confidential information" means information of any kind and in any form that relates to one or more persons and that is

(a) obtained by or on behalf of the Minister for the purposes of this Act; or

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(b) prepared from information referred to in paragraph (a).

It does not include information that does not directly or indirectly reveal the identity of the person to whom it relates.

"court of appeal"« *cour d'appel* »

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"court of appeal" has the same meaning as in section 2 of the *Criminal Code*.

"official"« *fonctionnaire* »

"official" means a person who is employed in the service of, who occupies a position of responsibility in the service of, or who is engaged by or on behalf of, Her Majesty or Her Majesty in right of a province, or a person who was formerly so employed, who formerly occupied such a position or who formerly was so engaged.

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Provision of information

(2) Except as authorized under this section, no official shall knowingly

- (a) provide, or allow to be provided, to any person any confidential information;
- (b) allow any person to have access to any confidential information; or
- (c) use any confidential information other than in the course of the administration or enforcement of this Act.

**Confidential
information evidence
not compellable**

(3) Despite any other Act of Parliament or other law, no official shall be required, in connection with any legal proceedings, to give or produce evidence relating to any confidential information.

**Communications if
proceedings have
been commenced**

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(4) Subsections (2) and (3) do not apply to

(a) criminal proceedings, either by indictment or on summary conviction, that have been commenced by the laying of an information or the preferring of an indictment, under an Act of Parliament; or

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(b) any legal proceedings relating to the administration or enforcement of this Act, the *Canada Pension Plan*, the *Employment Insurance Act*, the *Unemployment Insurance Act* or any other Act of Parliament or law of a province that provides for the imposition or collection of a tax or duty.

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**Circumstances
involving danger**

(5) The Minister may provide appropriate persons with any confidential information relating to imminent danger of death or physical injury to any individual.

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Disclosure of personal information

(6) An official may

(a) provide any confidential information to any person that may reasonably be regarded as necessary for the purpose of the administration or enforcement of this Act, solely for that purpose; 5

(b) provide a person with confidential information that can reasonably be regarded as necessary for the purposes of determining any liability or obligation of the person or any refund or other payment to which the person is or may become entitled under this Act; 10

(c) provide, allow to be provided, or allow inspection of or access to any confidential information to or by any person otherwise legally entitled to the information by reason of an Act of Parliament, solely for the purposes for which the person is entitled to the information;

(d) provide confidential information 15

(i) to an official of the Department of Finance solely for the purpose of the formulation or evaluation of fiscal policy,

(ii) to an official solely for the purpose of the initial implementation of a fiscal policy or for the purposes of the administration or enforcement of the *Canada Pension Plan*, the *Employment Insurance Act*, the *Unemployment Insurance Act* or an Act of Parliament that provides for the imposition or collection of a tax or duty or that provides that displays or indications of the price or consideration for property or services include tax under the *Excise Tax Act*, 20 25

(iii) to an official solely for the purposes of the administration or enforcement of a law of a province that provides for the imposition or collection of a tax or duty, that provides that displays or indications of the price or consideration for property or services include tax under the *Excise Tax Act* or that provides for reimbursements to persons of amounts paid or payable by them as or on account of tax under that Act, 30

(iv) to an official of the government of a province solely for the purpose of the formulation or evaluation of fiscal policy,

(v) to an official of a department or agency of the Government of Canada or of a province as to the name, address, occupation, size or type of business of a person, solely for the purpose of enabling 35

the department or agency to obtain statistical data for research and analysis,

(vi) to an official solely for the purpose of setting off, against any sum of money that may be due or payable by Her Majesty, a debt due to

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(A) Her Majesty, or

(B) Her Majesty in right of a province on account of taxes payable to the province, if an agreement exists between Canada and the province under which Canada is authorized to collect taxes on behalf of the province, or

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(vii) to an official solely for the purposes of section 7.1 of the *Federal-Provincial Fiscal Arrangements Act*;

(e) provide confidential information solely for the purposes of sections 23 to 25 of the *Financial Administration Act*;

(f) use confidential information to compile information in a form that does not directly or indirectly reveal the identity of the person to whom the information relates;

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(g) use, or provide any person with, confidential information solely for a purpose relating to the supervision, evaluation or discipline of an authorized person by Her Majesty in respect of a period during which the authorized person was employed by or engaged by or on behalf of Her Majesty to assist in the administration or enforcement of this Act, to the extent that the information is relevant for that purpose;

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(h) provide access to records of confidential information to the National Archivist of Canada or a person acting on behalf of or under the direction of the National Archivist of Canada, solely for the purpose of section 5 of the *National Archives of Canada Act*, and transfer the records to the care and control of those persons solely for the purpose of section 6 of that Act;

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(i) use confidential information relating to a person to provide that person with information; or

(j) provide the business number, name, address, telephone number and facsimile number of a holder of a business number to an official of a department or agency of the Government of Canada or of a province solely for the purposes of the administration or enforcement of an Act of Parliament or a law of a province, if the holder of the business number is required by that Act or that law to provide the

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information (other than the business number) to the department or agency.

**Measures to prevent
unauthorized use or
disclosure**

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(7) The person presiding at a legal proceeding relating to the supervision, evaluation or discipline of an authorized person may order any measures that are necessary to ensure that confidential information is not used or provided to any person for any purpose not relating to that proceeding, including

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(a) holding a hearing *in camera*;

(b) banning the publication of the information;

(c) concealing the identity of the person to whom the information relates; and

(d) sealing the records of the proceeding.

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**Disclosure to person
or on consent**

(8) An official may provide confidential information relating to a person

(a) to that person; and

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(b) with the consent of that person, to any other person.

**Appeal from order
or direction**

(9) An order or direction that is made in the course of or in connection with any legal proceedings and that requires an official to give or produce evidence relating to any confidential information may, by notice served on all interested parties, be appealed immediately by the Minister or by the person against whom it is made to

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(a) the court of appeal of the province in which it is made, in the case of an order or direction made by a court or other tribunal established under the laws of the province, whether that court or tribunal is exercising a jurisdiction conferred by the laws of Canada; or

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(b) the Federal Court of Appeal, in the case of an order or direction made by a court or other tribunal established under the laws of Canada.

Disposition of appeal

(10) The court to which an appeal is taken may allow the appeal and quash the order or direction appealed from or may dismiss the appeal, and the rules of practice and procedure from time to time governing appeals to the courts shall apply, with any modifications that the circumstances require, in respect of the appeal. 5

Stay

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(11) An appeal shall stay the operation of the order or direction appealed from until judgment is pronounced.

Bankruptcies

Definitions

193. (1) The definitions in this subsection apply in this section. 15

"bankrupt"

« *failli* »

"bankrupt" has the same meaning as in subsection 2(1) of the *Bankruptcy and Insolvency Act*.

"business"

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« *entreprise* »

"business" includes a part of a business.

"receiver"

« *séquestre* »

"receiver" means a person who

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(a) under the authority of a debenture, bond or other debt security, of a court order or of an Act of Parliament or of the legislature of a province, is empowered to operate or manage a business or a property of another person;

(b) is appointed by a trustee under a trust deed in respect of a debt security to exercise the authority of the trustee to manage or operate a business or a property of the debtor under the debt security; 30

(c) is appointed by a bank or an authorized foreign bank, within the meaning of section 2 of the *Bank Act*, to act as agent of the bank in the exercise of the authority of the bank under subsection 426(3) of that Act in respect of property of another person;

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(d) is appointed as a liquidator to liquidate the assets of a corporation or to wind up the affairs of a corporation; or

(e) is appointed as a committee, guardian or curator with authority to manage and care for the affairs and assets of an individual who is incapable of managing those affairs and assets.

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It includes a person who is appointed to exercise the authority of a creditor under a debenture, bond or other debt security to operate or manage a business or a property of another person, but, if a person is appointed to exercise the authority of a creditor under a debenture, bond or other debt security to operate or manage a business or a 15 property of another person, it does not include that creditor.

"relevant assets"

« *actif pertinent* »

"relevant assets" of a receiver means

(a) if the receiver's authority relates to all the properties, 20 businesses, affairs and assets of a person, all those properties, businesses, affairs and assets; and

(b) if the receiver's authority relates to only part of the properties, businesses, affairs or assets of a person, that part of the properties, businesses, affairs or assets.

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"representative"

« *représentant* »

"representative" means a person, other than a trustee in bankruptcy or a receiver, who is administering, winding up, controlling or otherwise dealing with any property, business or estate.

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Trustee's obligations

(2) For the purposes of this Act, if on a particular day a person becomes a bankrupt,

(a) the trustee in bankruptcy, and not the person, is liable for the payment of duty, interest or other amounts (other than amounts that 35 relate solely to activities in which the person begins to engage on or

after the particular day and to which the bankruptcy does not relate) that become payable by the person under this Act during the period beginning on the day immediately after the day the trustee became the trustee in bankruptcy of the person and ending on the day the discharge of the trustee is granted under the *Bankruptcy and Insolvency Act*, except that

(i) the trustee is liable for the payment of duty, interest or other amounts that became payable by the person after the particular day in respect of fiscal months that ended on or before the particular day, or of duty, interest or other amounts that became payable by the person after the particular day, only to the extent of the property and money of the person in possession of the trustee available to satisfy the liability,

(ii) the trustee is not liable for the payment of any duty, interest or other amount for which a receiver is liable under subsection (3), and

(iii) the payment by the person of an amount in respect of the liability shall discharge the liability of the trustee to the extent of that amount;

(b) where, on the particular day the person is licensed or registered under this Act, the licence or registration continues in relation to the activities of the person to which the bankruptcy relates as though the trustee in bankruptcy were the licensee or registrant in respect of those activities and ceases to apply to the activities of the person in which the person begins to engage on or after the particular day and to which the bankruptcy does not relate;

(c) the fiscal month of the person begins and ends on the day on which it would have begun and ended if the bankruptcy had not occurred, except that

(i) the fiscal month of the person during which the person becomes a bankrupt shall end on the particular day and a new fiscal month of the person in relation to the activities of the person to which the bankruptcy relates shall begin on the day immediately after the particular day, and

(ii) the fiscal month of the person, in relation to the activities of the person to which the bankruptcy relates, during which the trustee in bankruptcy is discharged under the *Bankruptcy and Insolvency Act*, shall end on the day the discharge is granted;

(d) subject to paragraph (f), the trustee in bankruptcy shall file with the Minister in the prescribed form and manner all returns in respect

of the activities of the person to which the bankruptcy relates for the fiscal months of the person ending in the period beginning on the day immediately after the particular day and ending on the day the discharge of the trustee is granted under the *Bankruptcy and Insolvency Act* and that are required under this Act to be filed by the person, as if those activities were the only activities of the person; 5

(e) subject to paragraph (f), if the person has not on or before the particular day filed a return required under this Act to be filed by the person for a fiscal month of the person ending on or before the particular day, the trustee in bankruptcy shall, unless the Minister 10 waives in writing the requirement for the trustee to file the return, file with the Minister in the prescribed form and manner a return for that fiscal month of the person; and

(f) if there is a receiver with authority in respect of any business, property, affairs or assets of the person, the trustee in bankruptcy is 15 not required to include in any return any information that the receiver is required under subsection (3) to include in a return.

Receiver's obligations

(3) For the purposes of this Act, if on a particular day a receiver is 20 vested with authority to manage, operate, liquidate or wind up any business or property, or to manage and care for the affairs and assets, of a person,

(a) where the relevant assets of the receiver are a part and not all of the person's businesses, properties, affairs or assets, the relevant 25 assets of the receiver shall be deemed to be, throughout the period during which the receiver is acting as receiver of the person, separate from the remainder of the businesses, properties, affairs or assets of the person as though the relevant assets were businesses, properties, affairs or assets, as the case may be, of a separate person; 30

(b) the person and the receiver are jointly and severally liable for the payment of any duty, interest or other amounts that become payable by the person under this Act before or during the period during which the receiver is acting as receiver of the person to the extent that the 35 duty, interest or other amounts can reasonably be considered to relate to the relevant assets of the receiver or to the businesses, properties, affairs or assets of the person that would have been the relevant assets of the receiver if the receiver had been acting as receiver of the person at the time the duty, interest or other amounts became payable except that 40

(i) the receiver is liable for the payment of duty, interest or other amounts that became payable before that period only to the extent of the property and money of the person in possession or under the control and management of the receiver after

(A) satisfying the claims of creditors whose claims ranked, on the particular day, in priority to the claim of the Crown in respect of the duty, interest or other amounts, and 5

(B) paying any amounts that the receiver is required to pay to a trustee in bankruptcy of the person,

(ii) the person is not liable for the payment of any duty, interest or other amount collected or collectible by the receiver, and 10

(iii) the payment by the person or the receiver of an amount in respect of the duty, interest or other amounts shall discharge the joint liability to the extent of that amount;

(c) the fiscal month of the person begins and ends on the day on which it would have begun and ended if the vesting had not occurred, except that 15

(i) the fiscal month of the person, in relation to the relevant assets of the receiver, during which the receiver begins to act as receiver of the person, shall end on the particular day and a new fiscal month of the person in relation to the relevant assets shall begin on the day immediately after the particular day, and 20

(ii) the fiscal month of the person, in relation to the relevant assets, during which the receiver ceases to act as receiver of the person, shall end on the day the receiver ceases to act as receiver of the person; 25

(d) the receiver shall file with the Minister in prescribed form containing prescribed information all returns in respect of the relevant assets of the receiver for fiscal months ending in the period during which the receiver is acting as receiver and that are required under this Act to be made by the person, as if the relevant assets were the only businesses, properties, affairs and assets of the person; and 30

(e) if the person has not on or before the particular day filed a return required under this Act to be filed by the person for a fiscal month of the person ending on or before the particular day, the receiver shall, unless the Minister waives in writing the requirement for the receiver to file the return, file with the Minister in prescribed form containing prescribed information a return for that fiscal month that relates to the businesses, properties, affairs or assets of the person that 35

would have been the relevant assets of the receiver if the receiver had been acting as receiver of the person during that fiscal month.

**Certificates for
receivers and
representatives**

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(4) Every receiver and representative shall, before distributing to any person any property or money under their control in their capacity as receiver or representative, obtain a certificate from the Minister certifying that

(a) all duty, interest and other amounts that are payable by the licensee, registrant or any person who is required to pay duty, interest or another amount under this Act in respect of the fiscal month during which the distribution is made, or any previous fiscal month, and 10

(b) all duty, interest and other amounts that are, or can reasonably be expected to become, payable under this Act by the representative or receiver in that capacity in respect of the fiscal month during which the distribution is made, or any previous fiscal month, 15

have been paid or that security for the payment of the duty, interest or other amounts has, in accordance with this Act, been accepted by the Minister. 20

**Liability for failure
to obtain certificate**

(5) Any receiver or representative who distributes property or money without obtaining a certificate in respect of the duty, interest or other amounts referred to in subsection (4), is personally liable for the payment of those amounts to the extent of the value of the property or money so distributed. 25

PART 6

ENFORCEMENT

*Offences and Punishment***Unlawful
manufacturing or
stamping**

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194. (1) Every person who contravenes section 24 or 26 is guilty of an offence and liable

(a) on conviction on indictment, to a fine of not less than \$10,000 and not more than \$1,000,000 or to imprisonment for a term of not more than five years, or to both; or

(b) on summary conviction, to a fine of not less than \$1,000 and not more than \$100,000 or to imprisonment for a term of not more than two years, or to both.

**Imprisonment in
default of payment**

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(2) If a fine is imposed, a term of imprisonment may be imposed in default of payment of the fine, but no such term shall exceed

(a) if the fine is imposed under paragraph (1)(a), five years in addition to any other term of imprisonment imposed on the person under that paragraph; and

(b) if the fine is imposed under paragraph (1)(b), two years in addition to any other term of imprisonment imposed on the person under that paragraph.

**Punishment –
section 29**

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195. (1) Every person who contravenes section 29

(a) is guilty of an indictable offence and liable to

(i) a fine of not less than the amount determined under subsection (2) and not more than the amount determined under subsection (3), or

(ii) both the fine described in subparagraph (i) and imprisonment for a term of not more than five years; or

(b) is guilty of an offence punishable on summary conviction and liable to

(i) a fine of not less than the amount determined under subsection (2) and not more than the lesser of \$100,000 and the amount determined under subsection (3), or

(ii) both the fine described in subparagraph (i) and imprisonment for a term of not more than two years.

Minimum amount

(2) The amount determined under this subsection for an offence under subsection (1) is the greater of

(a) \$3.144 multiplied by the number of kilograms of raw leaf tobacco to which the offence relates, and

(b) \$1,000 in the case of an indictable offence and \$500 in the case of an offence punishable on summary conviction.

Maximum amount

(3) The amount determined under this subsection for an offence under subsection (1) is the greater of

(a) \$4.716 multiplied by the number of kilograms of raw leaf tobacco to which the offence relates, and

(b) \$1,000 in the case of an indictable offence and \$500 in the case of an offence punishable on summary conviction.

Imprisonment in default of payment

(4) If a fine is imposed, a term of imprisonment may be imposed in default of payment of the fine, but no such term shall exceed

(a) if the fine is imposed under paragraph (1)(a), five years in addition to any other term of imprisonment imposed on the person under that paragraph; or

(b) if the fine is imposed under paragraph (1)(b), two years in addition to any other term of imprisonment imposed on the person under that paragraph.

**Punishment –
section 31**

196. (1) Every person who contravenes section 31

(a) is guilty of an indictable offence and liable to

(i) a fine of not less than the amount determined under subsection (2) and not more than the amount determined under subsection (3), or

(ii) both the fine described in subparagraph (i) and imprisonment for a term of not more than five years; or

(b) is guilty of an offence punishable on summary conviction and liable to

(i) a fine of not less than the amount determined under subsection (2) and not more than the lesser of \$500,000 and the amount determined under subsection (3), or

(ii) both the fine described in subparagraph (i) and imprisonment for a term of not more than two years.

Minimum amount

(2) The amount determined under this subsection for an offence under subsection (1) is the greater of

(a) the total of

(i) \$0.16 multiplied by the number of cigarettes to which the offence relates,

(ii) \$0.11 multiplied by the number of tobacco sticks to which the offence relates,

(iii) \$0.11 multiplied by the number of grams of manufactured tobacco other than cigarettes or tobacco sticks to which the offence relates, and

(iv) \$0.16 multiplied by the number of cigars to which the offence relates, and

(b) \$1,000 in the case of an indictable offence and \$500 in the case of an offence punishable on summary conviction.

Maximum amount

(3) The amount determined under this subsection for an offence under subsection (1) is the greater of

(a) the total of

(i) \$0.24 multiplied by the number of cigarettes to which the offence relates, 5

(ii) \$0.16 multiplied by the number of tobacco sticks to which the offence relates,

(iii) \$0.16 multiplied by the number of grams of manufactured tobacco other than cigarettes or tobacco sticks to which the offence relates, and 10

(iv) \$0.50 multiplied by the number of cigars to which the offence relates, and

(b) \$1,000 in the case of an indictable offence and \$500 in the case of an offence punishable on summary conviction. 15

Imprisonment in default of payment

(4) If a fine is imposed, a term of imprisonment may be imposed in default of payment of the fine, but no such term shall exceed

(a) if the fine is imposed under paragraph (1)(a), five years in addition to any other term of imprisonment imposed on the person under that paragraph; or 20

(b) if the fine is imposed under paragraph (1)(b), two years in addition to any other term of imprisonment imposed on the person under that paragraph. 25

Offence of diverting tobacco marked for sale in Ontario

197. Every person who sells or offers for sale manufactured tobacco, that has been marked or stamped in accordance with a statute of the Province of Ontario to indicate that the manufactured tobacco is intended for sale in that province, to a consumer in any other province is guilty of an offence and liable on summary conviction to a fine of not less than \$1,000 and not more than the greater of \$1,000 and 300% of the amount by which 30 35

(a) the duty that would be payable under section 41 on the manufactured tobacco if the applicable rates of duty were the rates set out in paragraphs 1(f), 2(d) and 3(b) of Schedule 1

exceeds

(b) the duty that was imposed by section 41 on the manufactured tobacco. 5

**Offence of diverting
tobacco marked for
sale in Quebec or
N.B.**

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198. Every person who sells or offers for sale cigarettes or tobacco sticks, that have been marked or stamped in accordance with a statute of the Province of Quebec or New Brunswick to indicate that the cigarettes or tobacco sticks are intended for sale in that province, to a consumer in any other province is guilty of an offence and liable on summary conviction to a fine of not less than \$1,000 and not more than the greater of \$1,000 and 300% of the amount by which 15

(a) the duty that would be imposed by section 41 on the cigarettes or tobacco sticks if the applicable rate of duty were the rate set out in paragraph 1(f) or 2(d) of Schedule 1 20

exceeds

(b) the duty that was imposed by section 41 on the cigarettes or tobacco sticks.

**Offence of diverting
cigarettes marked
for sale in N.S.**

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199. Every person who sells or offers for sale cigarettes, that have been marked or stamped in accordance with a statute of the Province of Nova Scotia to indicate that the cigarettes are intended for sale in that province, to a consumer in any other province, other than the Province of Prince Edward Island, is guilty of an offence and liable on summary conviction to a fine of not less than \$1,000 and not more than the greater of \$1,000 and 300% of the amount by which 30

(a) the duty that would be imposed by section 41 on the cigarettes if the applicable rate of duty were the rate set out in paragraph 1(f) of Schedule 1 35

exceeds

(b) the duty that was imposed by section 41 on the cigarettes.

**Offence of
unauthorized sale of
tobacco intended for
Indian reserve**

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200. (1) Every person who sells or offers for sale black stock on which duty was imposed by section 41 at a rate provided for under paragraph 1(a), 2(a) or 3(a) of Schedule 1, because of the application of subparagraph 1(a)(ii), 2(a)(ii) or 3(a)(ii) of that Schedule, to a person 10 other than a supplier, an on-reserve retailer or an Indian consumer in the Province of Ontario is guilty of an offence and liable on summary conviction to a fine of not less than \$1,000 and not more than the greater of \$1,000 and 300% of the amount by which

(a) the duty that would be imposed by section 41 on the black stock 15 if the applicable rates of duty were the rates set out in paragraphs 1(f), 2(d) and 3(b) of Schedule 1

exceeds

(b) the duty that was imposed by section 41 on the black stock.

Definitions

20

(2) In this section, "on-reserve retailer", "reserve" and "supplier" have the same meaning as in section 60.

**Offence of
unauthorized sale of
cigarettes intended
for Indian reserve**

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201. (1) Every person who sells or offers for sale black stock cigarettes on which duty was imposed by section 41 at a rate provided for under paragraph 1(c) of Schedule 1, because of the application of subparagraph 1(c)(ii) of that Schedule, to a person other than a 30 designated wholesale vendor, a designated retail vendor or an Indian consumer on a reserve in Nova Scotia is guilty of an offence and liable on summary conviction to a fine of not less than \$1,000 and not more than the greater of \$1,000 and 300% of the amount by which

(a) the duty that would be imposed by section 41 on the cigarettes if 35 the applicable rate of duty were the rate set out in paragraph 1(f) of Schedule 1

exceeds

(b) the duty that was imposed by section 41 on the cigarettes.

Definitions

(2) In this section, "designated retail vendor" and "designated wholesale vendor" have the same meaning as in section 61.

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Punishment for certain alcohol offences

202. (1) Every person who contravenes section 64, 71 or 72 or subsection 76(1) or section 81, 92 or 93

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(a) is guilty of an indictable offence and liable to

(i) a fine of not less than the amount determined under subsection (2) and not more than the amount determined under subsection (3), or

(ii) both the fine described in subparagraph (i) and imprisonment 15
for a term of not more than five years; or

(b) is guilty of an offence punishable on summary conviction and liable to

(i) a fine of not less than the amount determined under subsection (2) and not more than the lesser of \$100,000 and the 20
amount determined under subsection (3), or

(ii) both the fine described in subparagraph (i) and imprisonment
for a term of not more than two years.

Minimum amount

(2) The amount determined under this subsection for an offence under 25
subsection (1) is the greater of

(a) the total of

(i) \$11.066 multiplied by the number of litres of absolute ethyl alcohol in the spirits to which the offence relates,

(ii) \$0.5122 multiplied by the number of litres of wine to which 30
the offence relates, and

(iii) \$10 multiplied by the number of litres of denatured spirits or specially denatured spirits to which the offence relates, and

(b) \$1,000 in the case of an indictable offence and \$500 in the case of an offence punishable on summary conviction.

Maximum amount

5

(3) The amount determined under this subsection for an offence under subsection (1) is the greater of

(a) the total of

(i) \$22.132 multiplied by the number of litres of absolute ethyl alcohol in the spirits to which the offence relates,

10

(ii) \$1.0244 multiplied by the number of litres of wine to which the offence relates, and

(iii) \$20 multiplied by the number of litres of denatured spirits or specially denatured spirits to which the offence relates, and

(b) \$1,000 in the case of an indictable offence and \$500 in the case of an offence punishable on summary conviction.

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Imprisonment in default of payment

(4) If a fine is imposed, a term of imprisonment may be imposed in default of payment of the fine, but no such term shall exceed

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(a) if the fine is imposed under paragraph (1)(a), five years in addition to any other term of imprisonment imposed on the person under that paragraph; or

(b) if the fine is imposed under paragraph (1)(b), two years in addition to any other term of imprisonment imposed on the person under that paragraph.

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Punishment for more serious alcohol offences

203. (1) Every person who contravenes any of sections 63, 68 to 70, 73 or 85

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(a) is guilty of an indictable offence and liable to

(i) a fine of not less than the amount determined under subsection (2) and not more than the amount determined under subsection (3), or

(ii) both the fine described in subparagraph (i) and imprisonment for a term of not more than five years; or 5

(b) is guilty of an offence punishable on summary conviction and liable to

(i) a fine of not less than the amount determined under subsection (2) and not more than the lesser of \$500,000 and the amount determined under subsection (3), or 10

(ii) both the fine described in subparagraph (i) and imprisonment for a term of not more than two years.

Minimum amount

(2) The amount determined under this subsection for an offence under subsection (1) is the greater of 15

(a) the total of

(i) \$22.132 multiplied by the number of litres of absolute ethyl alcohol in the spirits to which the offence relates,

(ii) \$1.0244 multiplied by the number of litres of wine to which the offence relates, and 20

(iii) \$20 multiplied by the number of litres of denatured spirits or specially denatured spirits to which the offence relates, and

(b) \$1,000 in the case of an indictable offence and \$500 in the case of an offence punishable on summary conviction.

Maximum amount

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(3) The amount determined under this subsection for an offence under subsection (1) is the greater of

(a) the total of

(i) \$33.198 multiplied by the number of litres of absolute ethyl alcohol in the spirits to which the offence relates, 30

(ii) \$1.5366 multiplied by the number of litres of wine to which the offence relates, and

(iii) \$30 multiplied by the number of litres of denatured spirits or specially denatured spirits to which the offence relates, and

(b) \$1,000 in the case of an indictable offence and \$500 in the case of an offence punishable on summary conviction.

Imprisonment in default of payment

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(4) If a fine is imposed, a term of imprisonment may be imposed in default of payment of the fine, but no such term shall exceed

(a) if the fine is imposed under paragraph (1)(a), five years in addition to any other term of imprisonment imposed on the person 10 under that paragraph; or

(b) if the fine is imposed under paragraph (1)(b), two years in addition to any other term of imprisonment imposed on the person under that paragraph.

Destroying records and making false entries

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204. (1) Every person who has

(a) made, or participated in, assented to or acquiesced in the making of, false or deceptive statements in a return, application, certificate, 20 record or answer filed or made as required by or under this Act or the regulations,

(b) for the purpose of evading payment of any duty, interest or other amount imposed under this Act, or obtaining a refund to which the person is not entitled under this Act, 25

(i) destroyed, altered, mutilated, secreted or otherwise disposed of any records of a person, or

(ii) made, or assented to or acquiesced in the making of, false or deceptive entries, or omitted, or assented to or acquiesced in the omission, to enter a material particular in the records of a person, 30

(c) wilfully, in any manner, evaded or attempted to evade compliance with this Act or payment of duty, interest or other amount imposed under this Act,

(d) wilfully, in any manner, obtained or attempted to obtain a refund to which the person is not entitled under this Act, or 35

(e) conspired with any person to commit an offence described in any of paragraphs (a) to (c),

is guilty of an offence and liable on summary conviction to a fine of

(f) not less than the total of \$100 and 200% of the amount of duty that was sought to be evaded, and

(g) not more than the total of \$1,000 and 300% of the amount of duty that was sought to be evaded,

and in default of payment of the fine, to imprisonment for a term of not more than two years.

Prosecution on indictment

(2) Every person who is charged with an offence described in subsection (1) may be prosecuted on indictment and, if convicted, is, in addition to any penalty otherwise provided, liable to

(a) a fine of not less than the total of \$1,000 and 200% of the amount of duty that was sought to be evaded, or of the refund sought, and not more than the total of \$10,000 and 300% of the amount of the duty that was sought to be evaded, or of the refund sought, or, where the amount that was sought to be evaded cannot be ascertained, a fine of not less than \$2,000 and not more than \$25,000; or

(b) both a fine referred to in paragraph (a) and imprisonment for a term not exceeding five years.

Penalty on conviction

(3) A person who is convicted of an offence under this section is not liable to pay a penalty imposed under section 231 for the same evasion or attempt, unless notice of the penalty is served or sent under section 232 before the information or complaint giving rise to the conviction was laid or made.

Stay of appeal

(4) If, in any appeal under this Act, substantially the same facts are at issue as those that are at issue in a prosecution under this section, the Minister may file a stay of proceedings with the Tax Court and thereupon the proceedings before the Tax Court are stayed pending final determination of the outcome of the prosecution.

**Offence –
confidential
information**

205. (1) Every person who

(a) contravenes subsection 192(2), or

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(b) knowingly contravenes an order made under subsection 192(7)

is guilty of an offence and liable on summary conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 12 months, or to both.

**Offence –
confidential
information**

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(2) Every person

(a) to whom confidential information has been provided for a particular purpose pursuant to paragraph 192(6)(b), (c), or (g), or

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(b) who is an official to whom confidential information has been provided for a particular purpose pursuant to paragraph 192(6)(a), (d), (e) or (h),

and who for any other purpose knowingly uses, provides to any person, allows the provision to any person of, or allows any person access to, that information is guilty of an offence and liable on summary conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 12 months, or to both.

Definitions

(3) In this section, "official" and "confidential information" have the same meaning as in subsection 192(1).

**Other
contraventions**

206. Every person who contravenes

(a) a provision of this Act the contravention of which is not otherwise specified to be an offence under this Act, or

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(b) a regulation, other than a regulation that prescribes a matter or thing for the purpose of a provision of this Act the contravention of which is otherwise specified to be an offence under this Act,

is guilty of an offence and liable

(c) on conviction on indictment to a fine of not more than \$100,000 or to imprisonment for a term, of not more than five years, or to both, or

(d) on summary conviction to a fine of not more than \$10,000 or to imprisonment for a term of not more than two years, or to both.

Imprisonment in default of payment

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(2) If a fine is imposed, a term of imprisonment may be imposed in default of payment of the fine, but no such term shall exceed

(a) if the fine is imposed under paragraph (1)(c), five years in addition to any other term of imprisonment imposed on the person under that paragraph; and

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(b) if the fine is imposed under paragraph (1)(d), two years in addition to any other term of imprisonment imposed on the person under that paragraph.

Compliance orders

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207. (1) If a person has been convicted by a court of an offence for a failure to comply with a provision of this Act or a regulation, the court may make any order that it considers proper in order to enforce compliance with the provision.

Saving

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(2) A person who is convicted of failing to comply with a provision of this Act or a regulation is not liable to pay a penalty imposed under section 232 for the same failure, unless a written notice is served or sent under that section before the information or complaint giving rise to the conviction was laid or made.

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Officers of corporations, etc.

208. If a person other than an individual is guilty of an offence under this Act, every officer, director or agent of the person who directed, authorized, assented to, acquiesced in or participated in the commission

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of the offence is a party to and guilty of the offence and liable on conviction to the punishment provided for the offence, whether the person has been prosecuted or convicted.

Power to decrease punishment

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209. Despite the *Criminal Code* or any other law, the court has, in any prosecution or proceeding under this Act, neither the power to impose less than the minimum fine or imprisonment fixed by this Act nor the power to suspend sentence.

Information or complaint

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210. (1) An information or complaint under this Act may be laid or made by any officer of the Department, by a member of the Royal Canadian Mounted Police or by any person authorized to do so by the Minister and, where in an information or complaint it is purported to have been laid or made under this Act, it shall be deemed to have been laid or made by a person so authorized by the Minister and shall not be called into question for lack of authority of the informant or complainant, except by the Minister or a person acting for the Minister or for Her Majesty.

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Two or more offences

(2) An information or complaint in respect of an offence under this Act may be for one or more offences and no information, complaint, warrant, conviction or other proceeding in a prosecution under this Act is objectionable or insufficient by reason of the fact that it relates to two or more offences.

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Territorial jurisdiction

(3) An information or complaint in respect of an offence under this Act may be heard, tried or determined by any court where the accused is resident, carrying on an activity governed by this Act, found or apprehended or is in custody within its territorial jurisdiction notwithstanding the matter of the information or complaint did not arise within its territorial jurisdiction.

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Limitation of prosecutions

(4) An information or complaint under the *Criminal Code* relating to summary convictions, in respect of an offence under this Act, may be laid or made on or before the day that is eight years after the day the matter of the information or complaint arose. 5

Proceeds of Crime

Property obtained from offences

211. (1) No person shall possess any property or any proceeds of any property knowing that all or any part of it was obtained or derived directly or indirectly as a result of 10

(a) the commission of an offence under subsection 194(1), 196(1), 203(1) or 212(1); or

(b) a conspiracy or an attempt to commit, being a party to, being an accessory after the fact in relation to, or any counselling in relation to, an offence referred to in paragraph (a). 15

Punishment

(2) Every person who contravenes subsection (1)

(a) is guilty of an indictable offence and liable to a fine of not more than \$500,000 or to imprisonment for a term of not more than five years, or to both; or 20

(b) is guilty of an offence punishable on summary conviction and liable to a fine of not more than \$100,000 or to imprisonment for a term of not more than two years, or to both. 25

Exception

(3) A peace officer or a person acting under the direction of a peace officer is not guilty of an offence under this section by reason only that the peace officer or person possesses property or the proceeds of property mentioned in subsection (1) for the purposes of an investigation or otherwise in the execution of the peace officer's duties. 30

Laundering proceeds of certain offences

212. (1) No person shall use, transfer the possession of, send or deliver to any person or place, transport, transmit, alter, dispose of or otherwise deal with, in any manner or by any means, any property or any proceeds of any property with intent to conceal or convert that property or those proceeds and knowing that all or part of that property or those proceeds were obtained or derived directly or indirectly as a result of

(a) the commission of an offence under subsection 194(1), 196(1) or 203(1); or

(b) a conspiracy or an attempt to commit, being a party to, being an accessory after the fact in relation to, or any counselling in relation to, an offence referred to in paragraph (a).

Punishment

(2) Every person who contravenes subsection (1)

(a) is guilty of an indictable offence and liable to a fine of not more than \$500,000 or to imprisonment for a term of not more than five years, or to both; or

(b) is guilty of an offence punishable on summary conviction and liable to a fine of not more than \$100,000 or to imprisonment for a term of not more than two years, or to both.

Exception

(3) A peace officer or a person acting under the direction of a peace officer is not guilty of an offence under this section by reason only that the peace officer or person does any of the things mentioned in subsection (1) for the purposes of an investigation or otherwise in the execution of the peace officer's duties.

Part XII.2 of *Criminal Code* applicable

213. (1) Sections 462.3 and 462.32 to 462.5 of the *Criminal Code* apply, with any modifications that the circumstances require, in respect of proceedings for an offence under subsection 194(1), 196(1) or 203(1) or section 211 or 212.

**Reference to
enterprise crime
offence**

(2) For the purpose of subsection (1), the references in sections 462.37 and 462.38 and subsection 462.41(2) of the *Criminal Code* to an enterprise crime offence are deemed to include references to the offences referred to in subsection (1). 5

Penalties

**Contravention of
section 33 or 36**

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214. Every tobacco licensee who contravenes section 33 or 36 shall pay a penalty equal to 200% of the duty that was imposed on the tobacco product to which the contravention relates.

**Contravention of
section 37, 39, 45,
133 or 135**

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215. Every person who contravenes section 37, 39, 45, 133 or 135 shall pay a penalty of not more than \$25,000.

**Diversion of
duty-free alcohol**

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216. (1) If packaged alcohol is removed from an excise warehouse under section 130 the excise warehouse licensee of the warehouse shall pay a penalty equal to 200% of the duty that was imposed on the packaged alcohol unless the licensee proves to the satisfaction of the Minister that 25

(a) in the case of alcohol removed for a purpose described in any of subparagraphs 130(1)(a)(i) to (iv) or paragraph 130(2)(a), it was delivered as described in that subparagraph or paragraph; or

(b) in the case of alcohol removed for export under paragraph 130(1)(b) or (2)(b) or subsection 130(3), it was exported 30 by the licensee in accordance with this Act.

**Diversion of
duty-free tobacco –
subsection 46(2)**

(2) If a tobacco product manufactured in Canada is removed from the excise warehouse of the tobacco licensee who manufactured the product 35

in accordance with subsection 46(2), the licensee shall pay a penalty equal to 200% of the duty that was imposed on the tobacco product unless the licensee proves to the satisfaction of the Minister that

(a) in the case of a product removed in accordance with paragraph 46(2)(a), (b), (c), (d) or (f), it was delivered in accordance with that paragraph; or

(b) in the case of a product removed in accordance with paragraph 46(2)(e), it was exported by the licensee in accordance with this Act.

**Diversion of
duty-free tobacco –
subsection 46(3)**

(3) If a tobacco product manufactured in Canada is removed from an excise warehouse in accordance with subsection 46(3), the excise warehouse licensee of the warehouse shall pay a penalty equal to 200% of the duty that was imposed on the tobacco product unless the licensee proves to the satisfaction of the Minister that the product was delivered as ships' stores in accordance with the *Ships' Stores Regulations*.

**Diversion of
duty-free tobacco –
subsection 46(4)**

(4) If a tobacco product manufactured in Canada is removed from a special excise warehouse in accordance with subsection 46(4), the special excise warehouse licensee of the warehouse shall pay a penalty equal to 200% of the duty that was imposed on the tobacco product unless the licensee proves to the satisfaction of the Minister that the product was delivered to an accredited representative for their personal or official use.

**Diversion of
imported tobacco –
section 47**

(5) If an imported tobacco product is removed from an excise warehouse in accordance with subsection 47(2), the excise warehouse licensee of the warehouse shall pay a penalty equal to 200% of the duty that was imposed on the tobacco product unless the licensee proves to the satisfaction of the Minister that

(a) in the case of a product removed in accordance with paragraph 47(2)(a), (b), (c), or (d), it was delivered in accordance with that paragraph; or

(b) in the case of a product removed in accordance with paragraph 47(2)(e), it was exported by the licensee in accordance with this Act.

Exception

(6) A licensee who would otherwise be required to pay a penalty under this section is not required to pay the penalty if the licensee proves to the satisfaction of the Minister that the alcohol or tobacco product that was removed from their excise warehouse was returned to that warehouse. 5

Other diversions

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217. If

(a) any packaged alcohol or a tobacco product has been acquired by a person and duty was not payable because of the purpose for which the person acquired it or because of its destination, and

(b) the packaged alcohol or tobacco product is sold or used for a purpose or sent to a destination in circumstances in which duty would have been payable if it had originally been acquired for that purpose or sent to that destination, 15

unless section 216 applies, the person shall pay a penalty equal to 200% of the duty that was imposed on the packaged alcohol or tobacco product. 20

Contravention of section 70

218. Every person who contravenes section 70 shall pay a penalty equal to 25

(a) 200% of the duty that was imposed on the bulk spirits to which the contravention relates; or

(b) \$1.0244 per litre of bulk wine to which the contravention relates.

Contravention of section 71, etc.

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219. Every person who contravenes section 71, 72 or 74 shall pay a penalty equal to

(a) the duty that was imposed on the bulk spirits to which the contravention relates; or

(b) \$0.5122 per litre of bulk wine to which the contravention relates.

**Contravention of
section 86**

220. Every person who contravenes section 86 shall pay a penalty equal to \$0.5122 per litre of packaged wine to which the contravention relates. 5

**Unauthorized
possession, etc.
of SDS**

221. Every person who contravenes any of sections 93 to 99 shall pay a penalty of \$10 per litre of specially denatured spirits to which the contravention relates. 10

**Unauthorized
delivery of wine
container**

222. (1) Every alcohol licensee or excise warehouse licensee who delivers a marked special container of wine to premises other than a bottle-your-own premises or an excise warehouse shall pay a penalty equal to 50% of the duty that was imposed on the wine in the container. 15

Exception

(2) Subsection (1) does not apply to an excise warehouse licensee who removes from their excise warehouse an imported non-duty-paid marked special container of wine for export. 20

**Contravention of
section 83 or 90**

223. Every person who contravenes section 83 or 90 shall pay a penalty equal to 50% of the duty that was imposed on the wine to which the contravention relates. 25

**Contravention of
section 76, 79 or 81**

224. Every person who contravenes section 76, 79 or 81 shall pay a penalty equal to 50% of the duty that was imposed on the alcohol to which the contravention relates. 30

**Unauthorized
delivery of spirits
container**

225. (1) Every excise warehouse licensee who removes a marked special container of spirits from their excise warehouse for delivery to premises other than 5

(a) another excise warehouse, or

(b) the premises of a registered user,

shall pay a penalty equal to 50% of the duty that was imposed on the spirits in the container. 10

Exception

(2) Subsection (1) does not apply to an excise warehouse licensee who removes from their excise warehouse an imported non-duty-paid marked special container of spirits for export.

**Unauthorized
removal – spirits**

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226. Every person who contravenes section 89 shall pay a penalty equal to 50% of the duty that was imposed on the spirits to which the contravention relates.

**Contravention of
section 138**

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227. Every person who contravenes section 138 shall pay a penalty equal to

(a) \$1,000, and

(b) 50% of the duty that was imposed on the alcohol supplied in contravention of that section. 25

Failure to comply

228. Every person who fails to comply with

(a) section 186 or 187,

(b) a notice under section 189 or 190,

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(c) a licence or registration issued under this Act, or

(d) the regulations,

shall pay a penalty of not more than \$25,000.

Failure to file return

229. Every person who does not file a return as and when required pursuant to a demand issued under section 152 shall pay a penalty equal to the greater of 5

(a) \$250, and

(b) 5% of the amount of duty payable by the person for the period designated in the demand that was unpaid on the day that the return was due. 10

Failure to provide information

230. Every person who fails to provide any information or record as and when required under this Act or the regulations shall pay a penalty of \$100 for every failure unless, in the case of information required in respect of another person, a reasonable effort was made by the person to obtain the information. 15

False statements or omissions

231. Every person who under circumstances amounting to gross negligence in the carrying out of any duty or obligation imposed by or under this Act, makes or participates in, assents to or acquiesces in the making of a false statement or omission in a return, application, form, certificate, statement, invoice or answer (in this section referred to as a "return") shall pay a penalty equal to the greater of \$250 and 25% of the amount, if any, by which 20 25

(a) in the case of duty payable for a fiscal month,

(i) the amount of duty payable by the person for the fiscal month exceeds

(ii) the amount that would be the duty payable by the person for the fiscal month if the duty were determined on the basis of the information provided in the return; and 30

(b) in the case of an application for refund or any other payment that may be obtained under this Act,

(i) the amount that would be the refund or other payment payable to the person if it were determined on the basis of the information provided in the return

exceeds

(ii) the amount of the refund or other payment payable to the person.

Penalty Imposition

Notice of imposed penalty

232. (1) A penalty which a person is required to pay under any of sections 214 to 231 may be imposed by the Minister by serving on the person a written notice of the imposed penalty or by sending the notice by registered or certified mail to the person's last known address.

Penalty is in addition to other sanction

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(2) A penalty may be imposed in addition to a seizure or forfeiture of a thing or the suspension or cancellation of a licence or registration under this Act that arises from the same event as the contravention in respect of which the penalty is imposed.

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When penalty becomes payable

233. The amount of a penalty imposed on a person under this Act is payable to the Receiver General on the day on which the notice of the penalty imposed is served on or sent to the person.

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Interest on penalties

234. A person on whom a notice has been served or sent under section 232 shall, unless a request for a decision of the Minister is made under subsection 250(1) in respect of the penalty, pay, in addition to the penalty, interest at the prescribed rate for the period beginning on the day after the notice was served on or sent to the person and ending on the day the penalty has been paid in full, calculated on the outstanding balance of the penalty, except that interest shall not be payable on the penalty if the penalty is paid in full within 30 days after the day the notice was served on or sent to the person.

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Review of imposed penalty

235. The debt due to Her Majesty as a result of a notice served or sent under section 232 is final and not subject to review or to be restrained, prohibited, removed, set aside or otherwise dealt with except to the extent and in the manner provided by section 250. 5

Inspections

Inspections

236. (1) An authorized person may, at all reasonable times, for any purpose related to the administration or enforcement of this Act, inspect, 10
audit or examine the records, property or processes of a person that may be relevant in determining the obligations, or the entitlement to a refund, of that or any other person under this Act and, for those purposes, the authorized person may

(a) subject to subsection (2), enter any premises or place in which 15
any business is carried on, any property is kept, anything is done in connection with any business or any records are or should be kept;

(b) require the owner or manager of the property or business and any other person on the premises or in the place to give the authorized person all reasonable assistance and to answer all proper questions 20
relating to the administration or enforcement of this Act and, for that purpose, require the owner or manager to attend at the premises or place with the authorized person; and

(c) take samples, at no charge.

Prior authorization

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(2) If any premises or place referred to in paragraph (1)(a) is a dwelling-house, the authorized person may not enter that dwelling-house without the consent of the occupant, except under the authority of a warrant issued under subsection (3).

Warrant to enter dwelling-house

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(3) A judge may issue a warrant authorizing an authorized person to enter a dwelling-house subject to the conditions specified in the warrant if, on *ex parte* application by the Minister, a judge is satisfied by information on oath that 35

- (a) there are reasonable grounds to believe that the dwelling-house is a premises or place referred to in paragraph (1)(a);
- (b) entry into the dwelling-house is necessary for any purpose relating to the administration or enforcement of this Act; and
- (c) entry into the dwelling-house has been, or there are reasonable grounds to believe that entry will be, refused.

Orders if entry not authorized

(4) If the judge is not satisfied that entry into the dwelling-house is necessary for any purpose related to the administration or enforcement of this Act, the judge may, to the extent that access was or may be expected to be refused and that a record or property is or may be expected to be kept in the dwelling-house,

- (a) order the occupant of the dwelling-house to provide an authorized person with reasonable access to any record or property that is or should be kept in the dwelling-house; and
- (b) make any other order that is appropriate in the circumstances to carry out the purposes of this Act.

Definition of "dwelling-house"

(5) In this section, "dwelling-house" means the whole or any part of a building or structure that is kept or occupied as a permanent or temporary residence, and includes

- (a) a building within the curtilage of a dwelling-house that is connected to it by a doorway or by a covered and enclosed passageway; and
- (b) a unit that is designed to be mobile and to be used as a permanent or temporary residence and that is being so used.

Seizures

Seizure

237. (1) An officer may, if the officer believes on reasonable grounds that a provision of this Act or the regulations has been contravened, seize

(a) anything by means of or in relation to which the officer believes on reasonable grounds the contravention was committed;

(b) any conveyance that the officer believes on reasonable grounds was or is being used to transport such thing, or in which such thing is found; or

(c) anything that the officer believes on reasonable grounds will afford evidence in respect of the contravention.

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Notice of seizure

(2) An officer who seizes anything shall take any measures that are reasonable in the circumstances to give notice of the seizure to any person who the officer believes on reasonable grounds is entitled to make an application under section 258 in respect of the thing. 10

Report to Deputy Minister

238. If anything has been seized under section 237 or 239 the officer who seized the thing shall immediately report the circumstances of the seizure to the Deputy Minister. 15

Information for search warrant

239. (1) A justice of the peace may at any time issue a warrant signed by the justice authorizing an officer to search a building, receptacle or place for a thing and to seize it if the justice is satisfied by information on oath that there are reasonable grounds to believe that there will be found in the building, receptacle or place 20

(a) anything by means of or in relation to which this Act or the regulations has been contravened or is suspected of having been contravened;

(b) any conveyance that has been made use of in respect of such thing, whether at or after the time of the contravention; or

(c) anything that there are reasonable grounds to believe will afford evidence in respect of a contravention of this Act or the regulations. 30

Seizure of things not specified

(2) An officer who executes a warrant may seize, in addition to the things mentioned in the warrant,

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(a) anything by means of or in relation to which the officer believes on reasonable grounds that a provision of this Act or the regulations has been contravened; or

(b) anything that the officer believes on reasonable grounds will afford evidence in respect of a contravention of this Act or the regulations. 5

Execution of search warrant

(3) A warrant shall be executed by day, unless

(a) the justice is satisfied that there are reasonable grounds for it to be executed by night; 10

(b) the reasonable grounds are included in the information; and

(c) the warrant authorizes that it be executed by night.

Form of search warrant

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(4) A warrant shall refer to the contravention for which it is issued, identify the building, receptacle or place to be searched and the person who is alleged to have committed the contravention, and it shall be reasonably specific as to the thing to be searched for and seized.

When warrant not necessary

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(5) An officer may exercise any of the powers referred to in subsection (1) without a warrant if the conditions for obtaining a warrant exist but by reason of exigent circumstances it would not be practical to obtain one. 25

Custody of things seized

240. (1) Anything that is seized under section 237 or 239 shall immediately be placed in the custody of an officer.

Return of evidence

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(2) Anything that is seized under this Act as evidence alone shall be immediately returned on completion of all proceedings in which the thing seized may be required.

Copies of records

241. (1) If any record is examined or seized under this Act, the Minister, or the officer by whom the record is examined or seized, may make or have made one or more copies of the record, and a copy so made, purporting to be certified by the Minister or an officer, is admissible in evidence and has the same probative force as the original record would have if it had been proved in the ordinary way. 5

Detention of records seized

(2) No records that have been seized as evidence under this Act shall be detained for a period of more than three months after the time of seizure, unless, before the expiry of that period, 10

(a) the person from whom they were seized agrees to their further detention for a specified period;

(b) a justice of the peace is satisfied on application that, having regard to the circumstances, their further detention for a specified period is warranted and so orders; or 15

(c) judicial proceedings are instituted in which they may be required.

Seizure by peace officer

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242. A peace officer who detains or seizes anything that the peace officer suspects is subject to seizure under this Act shall without delay notify an officer of the detention or seizure and describe the thing detained or seized to the officer.

Return of Things Seized

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Certain things not to be returned

243. (1) Despite this Act, if alcohol, raw leaf tobacco, tobacco products or specially denatured spirits are seized under this Act they shall not be 30

(a) returned to the person from whom they were seized or any other person; or

(b) sold by the Minister.

Exception

(2) If the Minister is satisfied that anything referred to in subsection (1) was seized in error, the Minister may

(a) return the thing; or

(b) if the thing has been destroyed, pay an amount equal to the value of the thing at the time of its seizure as determined by the Minister. 5

Return if security provided

244. The Minister may, subject to this or any other Act of Parliament, return anything that has been seized under section 237 or 239 to the person from whom it was seized or to any person authorized by that person, on receipt of security in an amount equal to the value of the thing at the time of its seizure as determined by the Minister. 10

Dealing with things seized

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245. (1) If anything is seized under section 237 or 239, the Minister may sell, destroy or otherwise deal with it.

Payment of compensation

(2) If a person would be entitled to the return of a thing if it were available to be returned, but it is not possible to return it, the person shall be paid 20

(a) if the thing was sold, the proceeds from the sale; and

(b) in any other case, the value of the thing at the time of its seizure as determined by the Minister. 25

Forfeitures

Forfeiture from time of contravention

246. Subject to the reviews and appeals provided for by this Act, anything seized under section 237 or 239 is forfeit to Her Majesty from the time of the contravention of this Act or the regulations in respect of which it was seized, and no act or proceeding after the contravention is necessary to effect the forfeiture. 30

Things no longer forfeit

247. Things in respect of which security is received under section 244 cease to be forfeit from the time the security is received, and the security shall be held as forfeit instead of the things.

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Review of forfeiture

248. The forfeiture of a thing seized under section 237 or 239 or any security held as forfeit instead of the thing is final and not subject to review or to be restrained, prohibited, removed, set aside or otherwise dealt with except to the extent and in the manner provided by 10 section 250.

Review of Seizure or Imposed Penalty

Seizures made in error

249. If the Minister determines that a thing has been seized in error, 15 the Minister may release it.

Request for Minister's decision

250. (1) Any person

(a) from whom a thing is seized under section 237 or 239, 20

(b) who owns a thing that is seized under section 237 or 239,

(c) from whom any security is received under section 244 in respect of a thing seized under this Act, or

(d) on whom a notice is served or sent under section 232,

may, within 30 days after the date of the seizure or the service or 25 sending of the notice, request a decision of the Minister under section 252 by giving notice in writing to the officer who seized the thing, sent or served the notice, or to an officer closest to the place where the seizure took place or the notice was sent or served.

Burden of proof

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(2) The burden of proof that notice was given under subsection (1) lies on the person claiming to have given the notice.

Notice of reasons for action

251. (1) If a decision of the Minister under section 252 is requested under section 250, the Deputy Minister shall immediately serve on the person who requested the decision written notice of the reasons for the seizure, or for the notice served or sent under section 232, in respect of which the decision is requested. 5

Evidence

(2) The person on whom a notice is served may, within 30 days after it is served, furnish any evidence in the matter that the person desires to furnish. 10

Form of evidence

(3) Evidence may be given by affidavit made before a justice of the peace, commissioner for taking oaths or notary public.

Decision of the Minister

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252. (1) After the expiry of the 30 days referred to in subsection 251(2), the Minister shall, as soon as is reasonably possible having regard to the circumstances, consider and weigh the circumstances of the case and decide 20

(a) in the case of a thing seized on the ground that a provision of this Act or the regulations was contravened in respect of the thing, whether the provision was contravened; or

(b) in the case of a penalty imposed on a person under section 232 for a contravention referred to in any of sections 214 to 231, whether the contravention occurred. 25

Notice of decision

(2) The Minister shall, immediately on making a decision, serve on the person who requested the decision a written notice of the decision.

Judicial review

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(3) The Minister's decision is not subject to review or to be restrained, prohibited, removed, set aside or otherwise dealt with except to the extent and in the manner provided by subsection 255(1).

**If there is no
contravention, etc.**

253. (1) Subject to this or any other Act of Parliament,

(a) if the Minister decides, under paragraph 252(1)(a), that there has been no contravention of this Act or the regulations in respect of the thing referred to in that paragraph, the Minister shall without delay authorize the removal from custody of the thing or the return of any security taken in respect of it; and 5

(b) if, as a result of a decision made by the Minister under paragraph 252(1)(b), the Minister decides that a penalty that was imposed under section 232 is not justified by the facts or the law, the Minister shall without delay cancel the penalty and authorize the return of any money paid on account of it and any interest that was paid in respect of it. 10

**Interest on money
returned**

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(2) If any money is authorized to be returned to a person, there shall be paid to the person, in addition to the money returned, interest at the prescribed rate computed for the period beginning on the day after the day the money was paid and ending on the day the money is returned. 20

**If there is
contravention**

254. (1) If the Minister decides, under paragraph 252(1)(a), that there has been a contravention of this Act or the regulations in respect of the thing referred to in that paragraph, the Minister may, subject to any terms and conditions that the Minister may determine, 25

(a) return the thing on receipt by the Minister of an amount of money equal to the value of the thing at the time of the seizure, as determined by the Minister;

(b) return any portion of any security taken in respect of the thing; 30
and

(c) if the Minister considers that insufficient security was taken or if no security was received, demand any amount of money that the Minister considers sufficient in the circumstances.

**If there is
contravention –
penalty**

(2) If, having regard to a decision made by the Minister under paragraph 252(1)(b), the Minister decides that

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(a) the penalty imposed on a person under section 232 is insufficient having regard to the circumstances relating to the contravention, the Minister may demand from the person any additional amount of money that the Minister considers sufficient to increase the penalty to an amount not exceeding the maximum amount for which the person is liable for the contravention; or

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(b) the penalty imposed on a person under section 232 should be waived or reduced having regard to the circumstances relating to the contravention, the Minister may waive or reduce the penalty.

Interest

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(3) If an amount of money is demanded under paragraph (1)(c) or (2)(a), the person on whom the demand is made shall, unless an appeal is pending on the matter, pay to the Receiver General the amount demanded together with interest at the prescribed rate for the period beginning on the day that is 31 days after the day notice is served under subsection 252(2) and ending on the day the amount has been paid in full, calculated on the outstanding balance of the amount.

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**Amounts demanded
by the Minister**

(4) Any amount of money demanded under paragraph (1)(c) or (2)(a), from and after the time notice is served under subsection 252(2), constitutes a debt due to Her Majesty from the person who requested the decision and that person is in default unless, within 90 days after the time of service, the person

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(a) pays the amount so demanded; or

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(b) if the person appeals the decision of the Minister under section 255, gives security satisfactory to the Minister.

Federal Court

255. (1) A person who requests a decision of the Minister under section 252 may, within 90 days after being notified of the decision, appeal the decision by way of an action in the Federal Court in which the person is the plaintiff and the Minister is the defendant.

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Ordinary action

(2) The *Federal Court Act* and the rules made under it that are applicable to ordinary actions apply to actions instituted under subsection (1), except as varied by special rules made in respect of those actions.

Restoration of things seized pending appeal

256. If an appeal is taken by the Crown from a judgment that orders the Crown to give or return to a person anything that has been seized under section 237 or 239, the execution of the judgment shall not be suspended if the person to whom the thing is ordered given or returned gives any security to the Crown that the court that rendered the judgment considers sufficient to ensure delivery of the thing or the full value of the thing to the Crown if the judgment so appealed is reversed.

Third Party Claims

Meaning of "court"

257. In sections 258 to 260, "court" means

(a) in the Province of Ontario, the Ontario Court (General Division);

(b) in the Province of Quebec, the Superior Court of the Province;

(c) in the Provinces of Nova Scotia and British Columbia, the Supreme Court of the Province;

(d) in the Provinces of New Brunswick, Manitoba, Saskatchewan and Alberta, the Court of Queen's Bench for the Province;

(e) in the Provinces of Prince Edward Island and Newfoundland, the trial division of the Supreme Court of the Province; and

(f) in the Yukon Territory, the Northwest Territories and Nunavut, the Supreme Court.

Claiming interest

258. (1) If anything has been seized under section 237 or 239, any person, other than the person in whose possession it was when it was seized, who claims an interest in it as owner, mortgagee, lien-holder or holder of any like interest may, within 60 days after the seizure, apply

(in this section and sections 259 and 260 referred to as the "applicant") by notice in writing to the court for an order under section 259.

Date of hearing

(2) The court to which an application is made under this section shall fix a day, which day shall be not less than 30 days after the date of the filing of the application, for the hearing of the matter. 5

Notice to Deputy Minister

(3) An applicant who makes an application under this section shall serve notice of the application and of the hearing on the Deputy Minister, or an officer designated by the Deputy Minister for the purposes of this section, not later than 15 days after a day for the hearing of the application is fixed. 10

Service of notice

(4) The service of a notice is sufficient if it is sent by registered mail addressed to the Deputy Minister. 15

Order

259. An applicant is entitled to an order declaring that their interest is not affected by a seizure and declaring the nature and extent of their interest at the time of the contravention if, on the hearing of an application made under section 258, it is made to appear to the satisfaction of the court that the applicant 20

(a) acquired the interest in respect of which the applicant is applying in good faith before the contravention in respect of which the seizure was made; 25

(b) is innocent of any complicity in the contravention of this Act or the regulations that resulted in the seizure and of any collusion in relation to that contravention; and

(c) exercised all reasonable care in respect of any person permitted to obtain possession of the thing seized to satisfy the applicant that it was not likely to be used in contravention of this Act or the regulations, or if the applicant is a mortgagee or lien-holder, exercised that care with respect to the mortgagor or lien-giver. 30

Appeal

260. (1) An applicant or the Crown may appeal to the court of appeal from an order made under section 259 and the appeal shall be asserted, heard and decided according to the ordinary procedure governing appeals to the court of appeal from orders or judgments of a court. 5

Definition of "court of appeal"

(2) In this section, "court of appeal" means, in the province in which an order under section 259 is made, the court of appeal for that province as defined in section 2 of the *Criminal Code*. 10

Delivery to applicant

261. (1) The Deputy Minister or an officer designated by the Deputy Minister shall, after forfeiture of a thing has become final and on application made to the Deputy Minister by a person who has obtained a final order under section 259 or 260 in respect of the thing, direct that 15

(a) the thing be given to the applicant; or

(b) an amount calculated on the basis of the interest of the applicant in the thing at the time of the contravention in respect of which it was seized, as declared in the order, be paid to the applicant.

Limit on amount paid

(2) The total amount paid under paragraph (1)(b) in respect of a thing shall, if it was sold or otherwise disposed of under this Act, not exceed the proceeds of the sale or disposition, if any, less any costs incurred by Her Majesty in respect of the thing, and, if there are no proceeds of a disposition of a thing under this Act, no payment shall be made under that paragraph in respect of the thing. 25

Collection

Debts to Her Majesty

262. (1) Any duty, interest or another amount payable under this Act is a debt due to Her Majesty and is recoverable in the Federal Court or any other court of competent jurisdiction or in any other manner provided under this Act. 30

Limitation

(2) No proceedings for the recovery of an amount of any duty, interest or other amount payable by a person under this Act shall be commenced in a court

(a) in the case of an amount that may be assessed under this Act, unless at the time the action is commenced the person has been or may be assessed for that amount; and

(b) in any other case, more than four years after the person became liable to pay the amount.

Interest on judgments

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(3) If a judgment is obtained for any duty, interest or other amount payable under this Act, including a certificate registered under section 265, the provisions of this Act by which interest is payable for failure to pay an amount apply, with any modifications that the circumstances require, to the failure to pay the judgment debt, and the interest is recoverable in like manner as the judgment debt.

Security

263. (1) The Minister may, if the Minister considers it advisable, accept security in an amount and a form satisfactory to the Minister for payment of any amount that is or may become payable under this Act.

Security if objection or appeal

(2) If a person objects to or appeals from an assessment, the Minister shall accept security, in an amount and a form satisfactory to the Minister, furnished by or on behalf of the person, for the payment of any amount that is in controversy.

Surrender of excess security

(3) If a person who has furnished security, or on whose behalf security has been furnished, under this section requests in writing that the Minister surrender the security or any part of it, the Minister must surrender the security to the extent that its value exceeds the amount, at the time the request is received by the Minister, of any duty, interest or other amount for the payment of which it was furnished.

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Assessment before collection

264. (1) The Minister may not take any collection action under sections 265 to 270 in respect of any amount payable by a person that may be assessed under this Act, other than interest, unless the amount has been assessed. 5

Payment of remainder

(2) If the Minister mails a notice of assessment to a person, any amount assessed then remaining unpaid is immediately payable by the person to the Receiver General. 10

Minister may postpone collection

(3) The Minister may, subject to any terms and conditions that the Minister may stipulate, postpone collection action against a person in respect of all or any part of an amount assessed that is the subject of a dispute between the Minister and the person. 15

Certificates

265. (1) Any duty, interest or other amount payable by a person (in this section referred to as the "debtor") under this Act, or any part of the duty, interest or amount, that has not been paid as and when required under this Act may be certified by the Minister as an amount payable by the debtor. 20

Registration in court

(2) On production to the Federal Court, a certificate in respect of a debtor shall be registered in the Court and when so registered has the same effect, and all proceedings may be taken on the certificate, as if it were a judgment obtained in the Court against the debtor for a debt in the amount certified plus interest on the amount as provided under this Act to the day of payment and, for the purposes of those proceedings, the certificate is deemed to be a judgment of the Court against the debtor for a debt due to Her Majesty and enforceable as such. 30

Costs

(3) All reasonable costs and charges incurred or paid for the registration in the Court of a certificate or in respect of any proceedings taken to collect the amount certified are recoverable in like manner as 35

if they had been included in the amount certified in the certificate when it was registered.

Charge on property

(4) A document issued by the Federal Court evidencing a certificate in respect of a debtor registered under subsection (2), a writ of that Court issued under the certificate or any notification of the document or writ (such document, writ or notification in this section referred to as a "memorial") may be filed, registered or otherwise recorded for the purpose of creating a charge, lien or priority on, or a binding interest in, property in a province, or any interest in that property, held by the debtor in the same manner as a document evidencing

(a) a judgment of the superior court of the province against a person for a debt owing by the person, or

(b) an amount payable by a person in the province in respect of a debt owing to Her Majesty in right of the province

may be filed, registered or otherwise recorded in accordance with or under the law of the province to create a charge, lien or priority on, or a binding interest in, the property or interest.

Creation of charge

(5) If a memorial has been filed, registered or otherwise recorded,

(a) a charge, lien or priority is created on, or a binding interest is created in, property in the province, or any interest in such property, held by the debtor, or

(b) such property or interest in the property is otherwise bound,

in the same manner and to the same extent as if the memorial were a document evidencing a judgment referred to in paragraph (4)(a) or an amount referred to in paragraph (4)(b), and the charge, lien, priority or binding interest created shall be subordinate to any charge, lien, priority or binding interest in respect of which all steps necessary to make it effective against other creditors were taken before the time the memorial was filed, registered or otherwise recorded.

Proceedings in respect of memorial

(6) If a memorial is filed, registered or otherwise recorded in a province, proceedings may be taken in the province in respect of the memorial in the same manner and to the same extent as if the memorial

were a document evidencing a judgment referred to in paragraph (4)(a) or an amount referred to in paragraph (4)(b), except that if in any such proceeding or as a condition precedent to any such proceeding any order, consent or ruling is required under the law of the province to be made or given by the superior court of the province or a judge or official of the court, a like order, consent or ruling may be made or given by the Federal Court or a judge or official of the Federal Court and, when so made or given, has the same effect for the purposes of the proceeding as if it were made or given by the superior court of the province or a judge or official of the court.

Proceedings

(7) The proceedings that may be taken in a province include proceedings

(a) to enforce payment of the amount evidenced by the memorial, interest on the amount and all costs and charges paid or incurred in respect of

(i) the filing, registration or other recording of the memorial, and

(ii) proceedings taken to collect the amount;

(b) to renew or otherwise prolong the effectiveness of the filing, registration or other recording of the memorial;

(c) to cancel or withdraw the memorial wholly or in respect of any of the property or interests affected by it; or

(d) to postpone the effectiveness of the filing, registration or other recording of the memorial in favour of any right, charge, lien or priority that has been or is intended to be filed, registered or otherwise recorded in respect of any property or interest affected by the memorial.

Presentation of documents

(8) If

(a) a memorial is presented for filing, registration or other recording or a document relating to a memorial is presented for filing, registration or other recording for the purpose of a proceeding described in subsection (7) to any official in the land, personal property or other registry system of a province, it shall be accepted for filing, registration or other recording, or

(b) access is sought to any person, place or thing in a province to make the filing, registration or other recording, the access shall be granted

in the same manner and to the same extent as if the memorial or document relating to the memorial were a document evidencing a judgment referred to in paragraph (4)(a) or an amount referred to in paragraph (4)(b) for the purpose of a like proceeding, except that, if the memorial or document is issued by the Federal Court or signed or certified by a judge or official of the Court, any affidavit, declaration or other evidence required under the law of the province to be provided with or to accompany the memorial or document in the proceedings is deemed to have been provided with or to have accompanied the memorial or document as so required.

Sale, etc.

(9) Despite any law of Canada or of a province, a sheriff or other person shall not, without the written consent of the Minister, sell or otherwise dispose of any property, or publish any notice or otherwise advertise in respect of any sale or other disposition of any property under any process issued or charge, lien, priority or binding interest created in any proceeding to collect an amount certified in a certificate, interest on the amount and costs, but if that consent is subsequently given, any property that would have been affected by such a process, charge, lien, priority or binding interest if the Minister's consent had been given at the time the process was issued or the charge, lien, priority or binding interest was created shall be bound, seized, attached, charged or otherwise affected as it would be if that consent had been given at the time the process was issued or the charge, lien, priority or binding interest was created.

Completion of notices, etc.

(10) If information required to be set out by a sheriff or other person in a minute, notice or document required to be completed for any purpose cannot, by reason of subsection (9), be so set out, the sheriff or other person shall complete the minute, notice or document to the extent possible without that information and, when the consent of the Minister is given under that subsection, a further minute, notice or document setting out all the information shall be completed for the same purpose, and the sheriff or other person having complied with this subsection is deemed to have complied with the Act, regulation or rule requiring the information to be set out in the minute, notice or document.

Application for an order

(11) A sheriff or other person who is unable, by reason of subsection (9) or (10), to comply with a law or rule of court is bound by any order made by a judge of the Federal Court, on an *ex parte* application by the Minister, for the purpose of giving effect to the proceeding, charge, lien, priority or binding interest. 5

Deemed security

(12) If a charge, lien, priority or binding interest created under subsection (5) by filing, registering or otherwise recording a memorial is registered in accordance with subsection 87(1) of the *Bankruptcy and Insolvency Act*, it is deemed 10

(a) to be a claim that is secured by a security and that, subject to subsection 87(2) of that Act, ranks as a security claim under that Act; and 15

(b) to also be a claim referred to in paragraph 86(2)(a) of that Act.

Details in certificates and memorials

(13) Despite any law of Canada or of a province, in any certificate made under subsection (1) in respect of a debtor, in any memorial evidencing a certificate or in any writ or document issued for the purpose of collecting an amount certified, it is sufficient for all purposes 20

(a) to set out, as the amount payable by the debtor, the total of amounts payable by the debtor without setting out the separate amounts making up that total; and 25

(b) to refer to the rate of interest to be charged on the separate amounts making up the amount payable in general terms as interest at the prescribed rate under this Act applicable from time to time on amounts payable to the Receiver General, without indicating the specific rates of interest to be charged on each of the separate amounts or to be charged for any period. 30

Garnishment

266. (1) If the Minister has knowledge or suspects that a person is or will be, within one year, liable to make a payment to another person who is liable to pay an amount under this Act (in this section referred to as the "debtor"), the Minister may in writing require the person to immediately pay, if the money is immediately payable, and in any other 35

case, as and when the money becomes payable, the money otherwise payable to the debtor in whole or in part to the Receiver General on account of the debtor's liability under this Act.

Financial assistance garnishment

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(2) Without limiting the generality of subsection (1), if the Minister has knowledge or suspects that within 90 days

(a) a bank, credit union, trust company or other similar person (in this section referred to as the "institution") will loan or advance money to, or make a payment on behalf of, or make a payment in respect of a negotiable instrument issued by, a debtor who is indebted to the institution and who has granted security in respect of the indebtedness, or 10

(b) a person, other than an institution, will loan or advance money to, or make a payment on behalf of, a debtor who the Minister knows or suspects 15

(i) is employed by, or is engaged in providing services or property to, that person or was or will be, within 90 days, so employed or engaged, or

(ii) if that person is a corporation, is not dealing at arm's length with that person, 20

the Minister may in writing require the institution or person, as the case may be, to pay in whole or in part to the Receiver General on account of the debtor's liability under this Act the money that would otherwise be so loaned, advanced or paid, and any money so paid to the Receiver General is deemed to have been loaned, advanced or paid to the debtor. 25

Effect of receipt

(3) A receipt issued by the Minister for money paid as required under this section is a good and sufficient discharge of the original liability to the extent of the payment. 30

Effect of requirement

(4) If the Minister has, under this section, required a person to pay to the Receiver General on account of the liability under this Act of a debtor money otherwise payable by the person to the debtor as interest, rent, remuneration, a dividend, an annuity or other periodic payment, the requirement is applicable in respect of all such payments to be made by 35

the person to the debtor until the liability under this Act is satisfied, and operates to require payments to the Receiver General out of each such payment of any amount that may be stipulated by the Minister in the requirement.

Failure to comply

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(5) Every person who fails to comply with a requirement under subsection (1) or (4) is liable to pay to Her Majesty an amount equal to the amount that the person was required under that subsection to pay to the Receiver General.

Other failures to comply

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(6) Every institution or person that fails to comply with a requirement under subsection (2) with respect to money to be loaned, advanced or paid is liable to pay to Her Majesty an amount equal to the lesser of

(a) the total of money so loaned, advanced or paid, and

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(b) the amount that the institution or person was required under that subsection to pay to the Receiver General.

Assessment

(7) The Minister may assess any person for any amount payable under this section by the person to the Receiver General and, if the Minister sends a notice of assessment, sections 167 to 185 apply with any modifications that the circumstances require.

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Time limit

(8) An assessment of an amount payable under this section by a person to the Receiver General shall not be made more than four years after written notice from the Minister requiring the payment is served on the person.

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Effect of payment as required

(9) If an amount that would otherwise have been payable to or on behalf of the debtor is paid by a person to the Receiver General in accordance with a written notice from the Minister served on the person under this section or pursuant to an assessment under subsection (7), the person is deemed for all purposes to have paid the amount to or on behalf of the debtor.

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Recovery by deduction or set-off

267. If a person is indebted to Her Majesty under this Act, the Minister may require the retention by way of deduction or set-off of any amount that the Minister may specify out of any amount that may be or become payable to that person by Her Majesty. 5

Acquisition of debtor's property

268. For the purpose of collecting debts owed by a person to Her Majesty under this Act, the Minister may purchase or otherwise acquire any interest in the person's property that the Minister is given a right to acquire in legal proceedings or under a court order or that is offered for sale or redemption, and may dispose of any interest so acquired in any manner that the Minister considers reasonable. 10

Money seized from debtor

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269. (1) If the Minister has knowledge or suspects that a person is holding money that was seized by a police officer in the course of administering or enforcing the criminal law of Canada from another person who is liable to pay duty, interest or another amount under this Act (in this section referred to as the "debtor") and that is restorable to the debtor, the Minister may in writing require that person to turn over the money otherwise restorable to the debtor, in whole or in part, to the Receiver General on account of the debtor's liability under this Act. 20

Receipt of Minister

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(2) A receipt issued by the Minister for money turned over is a good and sufficient discharge of the requirement to restore the money to the debtor to the extent of the amount so turned over.

Seizure – failure to pay duty, etc.

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270. (1) If a licensee fails to pay duty, interest or another amount as required under this Act, the Minister may in writing give 30 days notice to the licensee addressed to their last known address of the Minister's intention to direct that the licensee's things be seized and sold, and, if the licensee fails to make the payment before the expiry of the 30 days, the Minister may issue a certificate of the failure and direct that the licensee's things be seized. 35

Disposition

(2) Things that have been seized shall be kept for 10 days at the expense and risk of the owner and, if the owner does not pay the amount due together with all expenses within the 10 days, the things shall be disposed of by public auction.

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Exception

(3) Subsection (2) does not apply to alcohol, raw leaf tobacco, tobacco products or specially denatured spirits.

**Proceeds of
disposition**

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(4) Any surplus resulting from a disposition, after deduction of the amount owing and all expenses, shall be paid or returned to the owner of the things seized.

**Exemptions from
seizure**

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(5) Anything of any person in default that would be exempt from seizure under a writ of execution issued by a superior court of the province in which the seizure is made is exempt from seizure under this section.

**Person leaving
Canada or
defaulting**

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271. (1) If the Minister suspects that a person has left or is about to leave Canada, the Minister may in writing, before the day otherwise fixed for payment, by notice to the person addressed to their latest 25 known address, demand payment of all duty, interest and other amounts under this Act for which the person is liable or would be liable if the time for payment had arrived, and the same shall be paid without delay despite any other provision of this Act.

Seizure

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(2) If a person fails to pay duty, interest or another amount demanded under this section as required, the Minister may direct that the person's things be seized and, in that case, subsections 270(2) to (5) apply, with any modifications that the circumstances require.

Liability of directors

272. (1) If a corporation fails to pay any duty or interest as and when required under this Act, the directors of the corporation at the time it was required to pay the duty or interest are jointly and severally liable, together with the corporation, to pay the duty or interest and any interest that is payable on the duty or interest under this Act. 5

Limitations

(2) A director of a corporation is not liable unless

(a) a certificate for the amount of the corporation's liability has been registered in the Federal Court under section 265 and execution for that amount has been returned unsatisfied in whole or in part; 10

(b) the corporation has commenced liquidation or dissolution proceedings or has been dissolved and a claim for the amount of the corporation's liability has been proved within six months after the earlier of the date of commencement of the proceedings and the date of dissolution; or 15

(c) the corporation has made an assignment or a receiving order has been made against it under the *Bankruptcy and Insolvency Act* and a claim for the amount of the corporation's liability has been proved within six months after the date of the assignment or receiving order. 20

Diligence

(3) A director of a corporation is not liable for a failure under subsection (1) if the director exercised the degree of care, diligence and skill to prevent the failure that a reasonably prudent person would have exercised in comparable circumstances. 25

Assessment

(4) The Minister may assess any person for any amount of duty or interest payable by the person under this section and, if the Minister sends a notice of assessment, sections 167 to 185 apply with any modifications that the circumstances require. 30

Time limit

(5) An assessment of any amount payable by a person who is a director of a corporation shall not be made more than two years after the person ceased to be a director of the corporation.

Amount recoverable

(6) If execution referred to in paragraph (2)(a) has issued, the amount recoverable from a director is the amount remaining unsatisfied after execution.

Preference

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(7) If a director of a corporation pays an amount in respect of the corporation's liability that is proved in liquidation, dissolution or bankruptcy proceedings, the director is entitled to any preference to which Her Majesty would have been entitled had the amount not been so paid, and if a certificate that relates to the amount has been 10 registered, the director is entitled to an assignment of the certificate to the extent of the director's payment, which assignment the Minister is empowered to make.

Contribution

(8) A director who satisfies a claim under this section is entitled to 15 contribution from the other directors who were liable for the claim.

Compliance by unincorporated bodies

273. (1) If any duty, interest or other amount is required to be paid 20 or any other thing is required to be done by or under this Act or the regulations by a person (in this section referred to as the "body") that is not an individual, a corporation or a partnership it shall be the joint and several liability and responsibility of

(a) every member of the body holding office as president, 25 chairperson, treasurer, secretary or similar officer of the body,

(b) if there are no such officers of the body, every member of any committee having management of the affairs of the body, and

(c) if there are no such officers of the body and no such committee, every member of the body,

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to pay that amount of duty, interest or other amount or to comply with the requirement, and if the amount is paid or the requirement is fulfilled by an officer of the body, a member of such a committee or a member of the body, it shall be considered as compliance with the requirement.

Assessment

(2) The Minister may assess any person for any amount for which the person is liable under this section and, if the Minister sends a notice of assessment, sections 167 to 185 apply with any modifications that the circumstances require.

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Limitation

(3) An assessment of a person shall not

(a) include any amount that the body was liable to pay before the day the person became jointly and severally liable;

(b) include any amount that the body became liable to pay after the day the person ceased to be jointly and severally liable; or

(c) be made more than two years after the day the person ceased to be jointly and severally liable unless the person was grossly negligent in the carrying out of any duty or obligation imposed on the body by or under this Act or made, or participated in, assented to or acquiesced in the making of, a false statement or omission in a return, application, form, certificate, statement, invoice or answer made by the body.

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Liability re transfers not at arm's length

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274. (1) If at any time a person transfers property, either directly or indirectly, by a trust or any other means, to

(a) their spouse or an individual who has since become their spouse,

(b) an individual who was under 18 years of age, or

(c) another person with whom the transferor was not dealing at arm's length,

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the transferee and transferor are jointly and severally liable to pay an amount equal to the lesser of

(d) the amount determined by the formula

$$A - B$$

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where

A is the amount, if any, by which the fair market value of the property at that time exceeds the fair market value at that time of the consideration given by the transferee for the transfer of the property, and

B is the amount, if any, by which the amount assessed the transferee under subsection 160(2) of the *Income Tax Act* in respect of the property exceeds the amount paid by the transferor in respect of the amount so assessed, and

(e) the total of all amounts each of which is

(i) an amount that the transferor is liable to pay under this Act in or in respect of the fiscal month in which the property was transferred or any preceding fiscal month, or

(ii) interest for which the transferor is liable as of that time.

However, nothing in this subsection limits the liability of the transferor under any other provision of this Act.

Assessment

(2) The Minister may at any time assess a transferee in respect of any amount payable by reason of this section, and, if the Minister sends a notice of assessment, sections 167 to 185 apply with any modifications that the circumstances require.

Rules applicable

(3) If a transferor and transferee have, by reason of subsection (1), become jointly and severally liable in respect of all or part of the liability of the transferor under this Act, the following rules apply:

(a) a payment by the transferee on account of the transferee's liability shall, to the extent of the payment, discharge the joint liability; and

(b) a payment by the transferor on account of the transferor's liability only discharges the transferee's liability to the extent that the payment operates to reduce the transferor's liability to an amount less than the amount in respect of which the transferee was, by subsection (1), made jointly and severally liable.

Special transfers to spouse

(4) Despite subsection (1), if at any time an individual transfers property to their spouse under a decree, order or judgment of a competent tribunal or under a written separation agreement and, at that time, the individual and their spouse were separated and living apart as a result of a breakdown of their marriage, for the purpose of paragraph (1)(d), the fair market value at that time of the property so transferred is deemed to be nil. However, nothing in this subsection limits the liability of the individual under any other provision of this Act.

Evidence and Procedure

Service

275. (1) If the Minister is authorized or required to serve, issue or send a notice or other document on or to a person that

(a) is a partnership, the notice or document may be addressed to the name of the partnership;

(b) is a society, club, association, organization or other body, the notice or document may be addressed to the name of the body; and

(c) carries on business under a name or style other than the name of the person, the notice or document may be addressed to the name or style under which the person carries on business.

Personal service

(2) If the Minister is authorized or required to serve, issue or send a notice or other document on or to a person that carries on a business, the notice or document is deemed to have been validly served, issued or sent if it is

(a) in the case of a person that is a partnership, served personally on one of the partners or left with an adult person employed at the place of business of the partnership; or

(b) in any other case, left with an adult person employed at the place of business of the person.

Sending by mail

276. (1) For the purposes of this Act and subject to subsection (2), anything sent by registered, certified or first class mail is deemed to

have been received by the person to whom it was sent on the day it was mailed.

Paying by mail

(2) A person who is required under this Act to pay an amount is deemed not to have paid it until it is received by the Receiver General. 5

Proof of service by mail

277. (1) If, under this Act or the regulations, provision is made for sending by mail a request for information, a notice or a demand, an affidavit of an officer of the Department, sworn before a commissioner or other person authorized to take affidavits, setting out that the officer has knowledge of the facts in the particular case, that such a request, notice or demand was sent by registered or certified mail on a named day to the person to whom it was addressed (indicating the address), and that the officer identifies as exhibits attached to the affidavit the post office certificate of registration of the letter or a true copy of the relevant portion of the certificate and a true copy of the request, notice or demand, is evidence of the sending and of the request, notice or demand. 15

Proof of personal service

(2) If, under this Act or the regulations, provision is made for personal service of a request for information, a notice or a demand, an affidavit of an officer of the Department, sworn before a commissioner or other person authorized to take affidavits, setting out that the officer has knowledge of the facts in the particular case, that such a request, notice or demand was served personally on a named day on the person to whom it was directed, and that the officer identifies as an exhibit attached to the affidavit a true copy of the request, notice or demand, is evidence of the personal service and of the request, notice or demand. 30

Proof of failure to comply

(3) If, under this Act or the regulations, a person is required to make a return, an application, a statement, an answer or a certificate, an affidavit of an officer of the Department, sworn before a commissioner or other person authorized to take affidavits, setting out that the officer has charge of the appropriate records and that after a careful examination and search of the records the officer has been unable to find in a given case that the return, application, statement, answer or certificate has been made by that person, is evidence that in that case the 35 40

person did not make the return, application, statement, answer or certificate.

Proof of time of compliance

(4) If, under this Act or the regulations, a person is required to make a return, an application, a statement, an answer or a certificate, an affidavit of an officer of the Department, sworn before a commissioner or other person authorized to take affidavits, setting out that the officer has charge of the appropriate records and that after careful examination of the records the officer has found that the return, application, statement, answer or certificate was filed or made on a particular day, is evidence that it was filed or made on that day.

Proof of documents

(5) An affidavit of an officer of the Department, sworn before a commissioner or other person authorized to take affidavits, setting out that the officer has charge of the appropriate records and that a document attached to the affidavit is a document or true copy of a document made by or on behalf of the Minister or a person exercising the powers of the Minister or by or on behalf of a person, is evidence of the nature and contents of the document.

Proof of no appeal

(6) An affidavit of an officer of the Department, sworn before a commissioner or other person authorized to take affidavits, setting out that the officer has charge of the appropriate records and has knowledge of the practice of the Department and that an examination of the records shows that a notice of assessment was mailed or otherwise sent to a person on a particular day under this Act and that, after careful examination and search of the records, the officer has been unable to find that a notice of objection or of appeal from the assessment was received within the time allowed for an objection or appeal to be filed under this Act, is evidence of the statements contained in the affidavit.

Presumption

(7) If evidence is offered under this section by an affidavit from which it appears that the person making the affidavit is an officer of the Department, it is not necessary to prove the signature of the person or that the person is such an officer, nor is it necessary to prove the signature or official character of the person before whom the affidavit was sworn.

Proof of documents

(8) Every document purporting to have been executed under or in the course of the administration or enforcement of this Act over the name in writing of the Minister, the Deputy Minister or an officer authorized to exercise the powers or perform the duties of the Minister under this Act, is deemed to be a document signed, made and issued by the Minister, the Deputy Minister or the officer, unless it has been called into question by the Minister or a person acting for the Minister or for Her Majesty. 5

Mailing date

(9) If a notice or demand that the Minister is required or authorized under this Act to send or mail to a person is mailed to the person, the day of mailing is presumed to be the date of the notice or demand. 10

**Date when
assessment made**

(10) If a notice of assessment has been sent by the Minister as required under this Act, the assessment is deemed to have been made on the day of mailing of the notice of assessment. 15

Proof of return

(11) In a prosecution for an offence under this Act, the production of a return, an application, a certificate, a statement or an answer required under this Act or the regulations, purporting to have been filed or delivered by or on behalf of the person charged with the offence or to have been made or signed by or on behalf of that person, is evidence that the return, application, certificate, statement or answer was filed or delivered by or on behalf of that person or was made or signed by or on behalf of that person. 20 25

**Proof of return –
print-outs**

(12) For the purposes of this Act, a document presented by the Minister purporting to be a print-out of the information in respect of a person received under section 147 by the Minister shall be received as evidence and, in the absence of evidence to the contrary, is proof of the return filed by the person under that section. 30

**Proof of return –
production of
returns, etc.**

(13) In a proceeding under this Act, the production of a return, an application, a certificate, a statement or an answer required under this Act or the regulations, purporting to have been filed, delivered, made or signed by or on behalf of a person, is evidence that the return, application, certificate, statement or answer was filed, delivered, made or signed by or on behalf of that person. 5

Evidence

10

(14) In a prosecution for an offence under this Act, an affidavit of an officer of the Department, sworn before a commissioner or other person authorized to take affidavits, setting out that the officer has charge of the appropriate records and that an examination of the records shows that an amount required under this Act to be paid to the Receiver General on account of duty, interest or another amount has not been received by the Receiver General, is evidence of the statements contained in the affidavit. 15

**Certificate of
analysis**

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278. An analyst who has analysed or examined a thing under this Act, or a sample of it, may issue a certificate or report setting out the results of the analysis or examination.

**Certificate or report
of analyst as proof**

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279. (1) Subject to subsections (2) and (3), a certificate or report purporting to be signed by an analyst stating that the analyst has analysed or examined anything to which this Act applies and stating the results of the analysis or examination, is admissible in evidence in a prosecution for an offence under this Act without proof of the signature or official character of the person appearing to have signed the certificate or report. 30

Notice

(2) The certificate or report may not be received in evidence unless the party intending to produce it has, before the trial, given the party against whom it is intended to be produced reasonable notice of that intention together with a copy of the certificate or report. 35

Attendance of analyst

(3) The party against whom the certificate or report is produced may, with leave of the court, require the attendance of the analyst for the purpose of cross-examination.

PART 7

REGULATIONS

Regulations – Governor in Council

280. (1) The Governor in Council may make regulations 10

(a) prescribing any matter or thing that by this Act is to be or may be prescribed;

(b) respecting the requirements that must be met by an applicant for a licence or a registration;

(c) respecting the conditions on which a licence or registration may be issued or renewed; 15

(d) respecting the activities that a licensee or registrant may carry on;

(e) respecting the amendment, suspension, renewal, cancellation or reinstatement of licences and registrations;

(f) prescribing facilities, equipment and personnel that must be provided by a licensee or registrant at the premises specified by the Minister under subsection 21(3); 20

(g) respecting the information to be provided on tobacco products and packaged alcohol and containers of tobacco products and packaged alcohol; 25

(h) designating, for the purposes of sections 18, 31, 44, 46, 47, 85, 130 and 135, certain classes of goods as ships' stores for use on board a conveyance within such class of conveyances as may be prescribed in the regulations and limiting the quantity of such goods that may be so used within such period of time as may be prescribed in the regulations; 30

(i) respecting the entry and removal of tobacco products or alcohol from an excise warehouse or a special excise warehouse;

- (j) respecting the manner in which approval of an instrument under section 131 is to be indicated on the instrument and providing for the removal of the indication;
- (k) prescribing the fees to be paid for the examination or re-examination of instruments under section 131 and for any other service or anything provided by the Minister in relation to that section; 5
- (l) prescribing the fees or the manner of determining any fees to be paid for a licence or registration;
- (m) requiring any class of persons to make returns respecting any class of information required in connection with the administration of this Act; 10
- (n) requiring any person to provide the Minister with the person's Social Insurance Number; and
- (o) generally to carry out the purposes and provisions of this Act. 15

Regulations – Minister

(2) The Minister may make regulations

- (a) prescribing a tobacco product of a particular brand, for the purposes of subsection 37(3) or 53(1); 20
- (b) prescribing cigarettes of a particular type or formulation exported from Canada under a particular brand, for the purposes of subsection 37(4) or 53(2);
- (c) prescribing percentages for the purposes of subsection 53 (1).

Effect

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(3) A regulation made under this Act has effect from the day it is published in the *Canada Gazette* or at any later time that may be specified in the regulation, unless it provides otherwise and

- (a) has a relieving effect only;
- (b) corrects an ambiguous or deficient enactment that was not in accordance with the objects of this Act or the regulations; 30
- (c) is consequential on an amendment to this Act that is applicable before the day the regulation is published in the *Canada Gazette*; or

(d) gives effect to a budgetary or other public announcement, in which case the regulation shall not, unless paragraph (a), (b) or (c) applies, have effect before the day on which the announcement was made.

PART 8

5

CONSEQUENTIAL AND RELATED AMENDMENTS AND
COMING INTO FORCE

Consequential And Related Amendments

1997, c. 36

Customs Tariff

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281. Section 21 of the *Customs Tariff* is replaced by the following:

Definitions

21. The definitions in this section apply in sections 21.1 to 21.3.

"beer" or "malt
liquor"

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« *bière* » ou
« *liqueur de malt* »

"beer" or "malt liquor" means beer or malt liquor, within the meaning of section 4 of the *Excise Act*, tariff item No. 2202.90.10, heading No. 22.03 or tariff item No. 2206.00.80, that is classified under that heading or tariff item or with the container in which it is imported.

"bulk"

25

« *en vrac* »

"bulk" has the same meaning as in section 2 of the *Excise Act, 1999*.

"excise warehouse"

30

« *entrepôt d'accise* »

"excise warehouse" has the same meaning as in section 2 of the *Excise Act, 1999*.

"excise warehouse
licensee"

« *exploitant agréé
d'entrepôt d'accise* »

5

"excise warehouse licensee" has the same meaning as in section 2 of the *Excise Act, 1999*.

"packaged"

« *emballé* »

10

"packaged" has the same meaning as in section 2 of the *Excise Act, 1999*.

"specified premises"

« *local déterminé* »

15

"specified premises" has the same meaning as in section 2 of the *Excise Act, 1999*.

20

"spirits"

« *spiritueux* »

"spirits" means spirits, as defined in section 2 of the *Excise Act, 1999*,

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(a) of an alcoholic strength by volume exceeding 22.9%, of tariff item No. 2204.21.32, 2204.29.32, 2205.10.30, 2205.90.30, 2206.00.22, 2206.00.72 or 2206.00.92, or

(b) of heading No. 22.07 or 22.08, other than of tariff item No. 2207.20.11, 2207.20.90, 2208.90.30 or 2208.90.91,

that are classified under that tariff item or heading or with the container in which they are imported.

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"wine"

« *vin* »

"wine" means wine, as defined in section 2 of the *Excise Act, 1999*, of tariff item No. 2202.90.20 or of heading No. 22.04, 22.05 or 22.06, 30
other than of tariff item No. 2204.21.32, 2204.29.32, 2205.10.30, 2205.90.30, 2206.00.22, 2206.00.72, 2206.00.80 or 2206.00.92, that
is classified under that tariff item or heading or with the container in
which it is imported.

Additional duty on bulk spirits

21.1 (1) In addition to any other duties imposed under this Act or any other Act of Parliament relating to customs, there is levied on bulk spirits, at the time the spirits are imported, an additional duty equal to the duty that would be imposed on the spirits by section 108 of the *Excise Act, 1999* if the spirits had been produced in Canada. 5

Duty payable under *Excise Act, 1999*

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(2) The duty levied on bulk spirits shall be paid and collected under the *Excise Act, 1999*, and interest and penalties shall be imposed, calculated, paid and collected under that Act, as if the duty were duty imposed on the spirits under that Act, and, for those purposes, that Act applies with any modifications that the circumstances require. 15

Limitation

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(3) Subsection (2) does not apply to bulk spirits that have not been released under the *Customs Act*.

Additional duty on packaged spirits

25

21.2 (1) Subject to subsection (3), in addition to any other duties imposed under this Act or any other Act of Parliament relating to customs, there is levied on packaged spirits, at the time they are imported, and paid in accordance with the *Customs Act*, an additional duty equal to the duty that would be imposed on them by section 108 or 109 of the *Excise Act, 1999* if they had been produced in Canada. 30

Additional duty on packaged wine

35

(2) Subject to subsection (3), in addition to any other duties imposed under this Act or any other Act of Parliament relating to customs, there is levied on packaged wine, at the time it is imported, and paid in accordance with the *Customs Act*, an additional duty equal to the duty that would be imposed on it by section 120 of the *Excise Act, 1999* if it had been packaged in Canada. 40

**Goods entered into
warehouse or
premises**

(3) If, immediately after being released under the *Customs Act*, 5
packaged spirits or wine are entered into the excise warehouse of the
excise warehouse licensee or the specified premises of the licensed user
who imported the spirits or wine, the duty levied on the spirits or wine
by subsection (1) or (2)

(a) does not become payable at the time the spirits or wine are 10
imported; and

(b) shall be paid and collected under the *Excise Act, 1999*, and 15
interest and penalties shall be imposed, calculated, paid and collected
under that Act, as if the duty were imposed under that Act, and, for
those purposes, that Act applies with any modifications that the
circumstances require.

**Additional duty on
beer**

21.3 In addition to any other duties imposed under this Act or any 20
other Act of Parliament relating to customs, there is levied on beer or
malt liquor, at the time it is imported, and paid in accordance with the
Customs Act, an additional duty equal to the duty that would be levied 25
on it by section 170 of the *Excise Act* if it had been manufactured or
produced in Canada.

R.S., c. E-14

Excise Act

282. The *Excise Act* is amended by adding the following after
section 1 and under the subheading "General":

APPLICATION

**Non-application of
Act**

1.1 Despite anything in this Act, on the coming into force of the 35
Excise Act, 1999,

(a) this Act shall cease to apply in respect of

(i) the manufacture of any goods or substance other than beer or 40
malt liquor,

(ii) the handling of, or dealing with, anything that is or relates to any goods or substance other than beer or malt liquor, and

(iii) duties of excise levied, collected and payable on any goods or substance other than beer or malt liquor; and

(b) for the purposes of the application of the provisions of the *Interpretation Act* that relate to an enactment that is repealed, the provisions of this Act are deemed to be repealed to the extent that they apply in respect of the matters described in paragraph (a).

283. The definition "beer" or "malt liquor" in section 4 of the Act is replaced by the following:

**"beer" or "malt
liquor"**

« bière » ou

« liqueur de malt »

"beer" or "malt liquor" means all fermented liquor brewed in whole or in part from malt, grain or any saccharine matter without any process of distillation but does not include wine as defined in section 2 of the *Excise Act, 1999*;

284. Section 176 of the Act is amended by adding the following after subsection (2):

Exception

(3) Subsection (1) does not apply to a person who is licensed as an alcohol licensee under the *Excise Act, 1999* who produces beer solely for the purpose of distilling the beer.

R.S., c. E-15

Excise Tax Act

1993, c. 25, s. 54;

1994, c.29, s. 1(1)

285. (1) The definitions "accredited representative", "Atlantic manufactured tobacco", "black stock", "black stock cigarettes", "black stock manufactured tobacco", "cigar", "cigarette", "licensed tobacco manufacturer", "manufactured tobacco" and "tobacco stick" in subsection 2(1) of the *Excise Tax Act* are repealed.

1994, c. 29 s. 1(2)

(2) Subsection 2(7) of the Act is repealed.

1993, c. 25, s. 55(1)

286. (1) Subsection 23(1) of the Act is replaced by the following:

**Tax on various
articles at schedule
rates**

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23. (1) Subject to subsections (6) to (8), whenever goods mentioned in Schedule I are imported or are manufactured or produced in Canada and delivered to a purchaser, there shall be imposed, levied and collected, in addition to any other duty or tax that may be payable under this or any other Act or law, an excise tax in respect of those goods at the applicable rate set out in the applicable section of that Schedule, computed, if that rate is specified as a percentage, on the duty paid value or the sale price, as the case may be. 10 15

**R.S., c. 15.
(1st Supp.), s. 12(1)**

(2) Subsection 23(3.1) of the Act is replaced by the following:

Deemed sale

(3.1) For the purposes of this Part, a person who, under a contract for labour, manufactures or produces goods mentioned in Schedule I from any article or material supplied by another person, other than a manufacturer licensed for the purposes of this Part, for delivery to that other person is deemed to have sold the goods, at a sale price equal to the charge made under the contract in respect of the goods, at the time they are delivered to that other person. 20 25

1993, c. 25, s. 55(2)

(3) Subsection 23(5) of the Act is repealed.

(4) Paragraph 23(7)(a) of the Act is repealed.

1995, c. 41, s. 113(4)

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(5) Subsections 23(8.1) to (8.3) of the Act are repealed.

1993, c. 25, s. 55(4)

(6) Subsections 23(9.2) and (9.3) of the Act are repealed.

1993, c.25, s. 56;
1994, c.29, ss. 5,6;
1995, c.36, ss. 2, 3,
4; 1997, c. 26
ss. 56-66, 1998, c. 21
s. 80

5

287. Sections 23.1 to 23.36 of the Act are repealed.

288. Section 24 of the Act is repealed.

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R.S., cc. 1, 7
(2nd Supp.), ss. 11,
189; 1990, c. 45,
ss. 6,7; 1993, c. 25,
s. 57

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289. Part IV of the Act is repealed.

290. Subsection 50(9) of the Act is repealed.

1993, c. 25, s. 59;

291. (1) Paragraph 66(1)(b) of the Act is repealed.

1995, c. 46, s. 2

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(2) Paragraph 66(2)(a) of the Act is repealed.

1993, c. 25, s. 59

292. Section 66.1 of the Act is repealed.

1995, c. 46, s. 3

293. Paragraph 68.1(2)(a) of the Act is repealed.

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1994, c. 29, s. 7;
1995, c. 36, s. 6;
1997, c. 26, ss. 67,
68; 1998, c. 21, s. 81

294. Sections 68.161 to 68.169 of the Act are repealed.

30

1993, c. 25, s. 61

295. Subsection 68.17(2) of the Act is repealed.

1993, c. 25, s. 62

296. Subsection 70(5) of the Act is repealed.

1994, c. 29, s. 10;

1997, c. 26, ss. 70-73

5

297. Sections 97.1 to 97.5 of the Act are repealed.

1994, c. 29, s. 11

298. Sections 98.1 and 98.2 of the Act are repealed.

1997, c. 10, s. 58

10

299. Paragraph 252(1)(b) of the Act is repealed.

1994, c. 29, s. 14;

1997, c. 26, ss. 74,

76; 1998, c. 21,

ss. 82, 83

15

300. Schedule II to the Act is repealed.

R.S., c. I-3

Importation of Intoxicating Liquors Act

1993, c. 49, s. 159

301. (1) The definition "NAFTA country" in section 2 of the 20
***Importation of Intoxicating Liquors Act* is repealed.**

(2) Section 2 of the Act is amended by adding the following in alphabetical order:

"bulk"

« en vrac »

25

"bulk" has the same meaning as in section 2 of the *Excise Act, 1999*;

"denature"

« *dénaturation* »

"denature" has the same meaning as in section 2 of the *Excise Act, 1999*;

"distillery"

« *distillerie* »

"distillery" means the premises of a licensed distiller and includes the excise warehouse of a licensed distiller;

"excise warehouse"

« *entrepôt d'accise* »

"excise warehouse" has the same meaning as in section 2 of the *Excise Act, 1999*;

"licensed distiller"

« *distillateur agréé* »

"licensed distiller" means a person who holds an alcohol licence under section 13 of the *Excise Act, 1999* and who produces, packages or denatures spirits;

"packaged"

« *emballé* »

"packaged" has the same meaning as in section 2 of the *Excise Act, 1999*;

"spirits"

« *spiritueux* »

"spirits" has the same meaning as in section 2 of the *Excise Act, 1999*;

1993, c. 44, s. 160(1)

302. (1) Subsection 3(1.1) of the Act is repealed.

1997, c. 36, s. 211

(2) Paragraphs 3(2)(b) to (c) of the Act are replaced by the following:

(b) the importation of intoxicating liquor into a province by any person who is a licensed distiller or who is duly licensed by the Government of Canada to carry on the business or trade of a brewer if the intoxicating liquor is imported solely for the purpose of being

used for blending with or flavouring the products of the business or trade of a distiller or brewer carried on by the person in the province, and while kept by the person in the province is kept in a place or warehouse that conforms in all respects to the requirements of the law governing those places or warehouses, and is used solely for blending with or flavouring the products of the person's business or trade as a distiller or brewer; 5

(c) the importation of bulk spirits into a province by a licensed distiller for the purpose of being packaged by the distiller, if the spirits while kept by the distiller in the province are kept in a place or warehouse that conforms in all respects to the requirements of the law governing those places or warehouses; and 10

(d) the transfer from one distillery to another of any spirits produced or packaged in accordance with the *Excise Act, 1999* that is permitted by any Act or regulation or by special permit of the Department of National Revenue. 15

1994, c. 14, s. 81

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(3) Subsection 3(3) of the Act is repealed.

R.S., c. T-2

Tax Court of Canada Act

1990, c. 45, s. 55

303. (1) Subsection 2.2(2) of the *Tax Court of Canada Act* is replaced by the following: 25

Definition "amount in dispute"

(2) For the purposes of this Act, the "amount in dispute" in an appeal means 30

(a) in the case of an appeal under the *Excise Act, 1999*,

(i) the amount of duty, refund or relief that is in issue in the appeal, 35

(ii) any interest under that Act that is in issue in the appeal, and

(iii) any amount of duty, refund or relief under that Act, that is likely to be affected by the appeal in any other appeal, assessment

or proposed assessment of the person who has brought the appeal;
and

(b) in the case of an appeal under Part IX of the *Excise Tax Act*,

(i) the amount of tax, net tax and rebate, within the meaning of that Part, that is in issue in the appeal,

(ii) any interest or penalty under that Part that is in issue in the appeal, and

(iii) any amount of tax, net tax or rebate, within the meaning of that Part, that is likely to be affected by the appeal in any other appeal, assessment or proposed assessment of the person who has brought the appeal.

1996, c. 23, s. 188

304. (1) Subsection 12(1) of the Act is replaced by the following:

Jurisdiction

12. (1) The Court has exclusive original jurisdiction to hear and determine references and appeals to the Court on matters arising under the *Canada Pension Plan*, the *Cultural Property Export and Import Act*, the *Employment Insurance Act*, the *Excise Act, 1999*, Part IX of the *Excise Tax Act*, the *Income Tax Act*, the *Old Age Security Act* and the *Petroleum and Gas Revenue Tax Act*, where references or appeals to the Court are provided for in those Acts.

1990, c. 45, s. 57;

1998, c. 19, s. 290

(2) Subsections 12(3) and (4) of the Act are replaced by the following:

Further jurisdiction

(3) The Court has exclusive original jurisdiction to hear and determine questions referred to it under section 173 or 174 of the *Income Tax Act*, section 184 or 185 of the *Excise Act, 1999* or section 310 or 311 of the *Excise Tax Act*.

Extensions of time

(4) The Court has exclusive original jurisdiction to hear and determine applications for extensions of time under section 166.2 or 167 of the *Income Tax Act*, subsection 103(1) of the *Employment Insurance*

Act, section 177 or 178 of the *Excise Act, 1999*, section 304 or 305 of the *Excise Tax Act*, subsection 28(1) of the *Canada Pension Plan* or section 33.2 of the *Cultural Property Export and Import Act*.

1990, c. 45, s. 58

305. Subsection 18.18(2) of the Act is replaced by the following: 5

**Calculation of time
limits**

(2) For the purpose of calculating a time limit for the purposes of section 18.3003 or 18.3005, the following periods shall be excluded:

(a) the period beginning on December 21 in any year and ending on January 7 of the next year; and 10

(b) the period during which proceedings are stayed in accordance with subsection 204(4) of the *Excise Act, 1999* or subsection 327(4) of the *Excise Tax Act*.

1998, c. 19, s. 295

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306. Subsection 18.29(3) of the Act is replaced by the following:

Extensions of time

(3) The provisions referred to in subsection (1) also apply, with any modifications that the circumstances require, in respect of applications for extensions of time under section 166.2 or 167 of the *Income Tax Act*, section 177 or 178 of the *Excise Act, 1999*, section 304 or 305 of the *Excise Tax Act*, subsection 103(1) of the *Employment Insurance Act*, subsection 28(1) of the *Canada Pension Plan* or section 33.2 of the *Cultural Property Export and Import Act*. 20

1998, c. 19, s. 296

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307. Section 18.3001 of the Act is replaced by the following:

**Application – Excise
Act, 1999 & Excise
Tax Act**

18.3001 Subject to section 18.3002, this section and sections 18.3003 to 18.301 apply, with any modifications that the circumstances require, to an appeal under 30

(a) the *Excise Act, 1999* if

(i) a person has so elected in the notice of appeal for an appeal under that Act or at such later time as may be provided in the rules of Court, and

(ii) the amount in dispute is \$25,000 or less; and

(b) Part IX of the *Excise Tax Act* if a person has so elected in the notice of appeal for an appeal under that Act or at such later time as may be provided in the rules of Court.

1990, c. 45, s. 61

308. Subsection 18.3002(3) of the Act is replaced by the following:

Costs

(3) The Court shall, on making an order under subsection (1), order that all reasonable and proper costs of the person who has brought the appeal be borne by Her Majesty in right of Canada where

(a) in the case of an appeal under the *Excise Act, 1999*, the total of sales for the prior calendar year of that person is equal to or less than \$1,000,000; and

(b) in the case of an appeal under Part IX of the *Excise Tax Act*,

(i) the amount in dispute is equal to or less than \$7,000, and

(ii) the aggregate of supplies for the prior fiscal year of that person is equal to or less than \$1,000,000.

1998, c. 19, s. 298

309. Subsection 18.3009(1) of the Act is replaced by the following:

Costs – appeal under *Excise Act*, 1999 or *Excise Tax Act*

18.3009 (1) If an appeal referred to in section 18.3001 is allowed and the judgment reduces the amount of duty, tax, net tax, rebate, refund, relief, interest or penalty in issue in the appeal by more than one half, the Court may award costs, in accordance with the rules of Court, to the person who brought the appeal if

(a) in the case of an appeal under the *Excise Act, 1999*

- (i) the amount in dispute was equal to or less than \$25,000, and
- (ii) the total of sales for the prior calendar year of that person was equal to or less than \$1,000,000; and

(b) in the case of an appeal under Part IX of the *Excise Tax Act*,

- (i) the amount in dispute was equal to or less than \$7,000, and
- (ii) the aggregate of supplies for the prior fiscal year of that person was equal to or less than \$1,000,000.

1990, c. 45, s. 62

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310. Subsection 18.31(2) of the Act is replaced by the following:

Determination of a question

(2) Where an application has been made under section 184 of the *Excise Act, 1999* or section 310 of the *Excise Tax Act* for the determination of a question, sections 17.1, 17.2 and 17.4 to 17.8 apply, with any modifications that the circumstances require, in respect of the determination of the question.

1990, c. 45, s. 63

311. Subsection 18.32(1) of the Act is replaced by the following:

Provisions applicable to determination of a question

(2) Where an application has been made under section 185 of the *Excise Act, 1999* or section 311 of the *Excise Tax Act* for the determination of a question, the application or determination of the question shall, subject to section 18.33, be determined in accordance with sections 17.1, 17.2 and 17.4 to 17.8, with such modifications as the circumstances require.

Coming into Force

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Coming into force

312. This Act or any of its provisions comes into force on a day or days to be fixed by order of the Governor in Council.

Schedule 1

(Section 41)

TOBACCO

1. Cigarettes:

(a) \$0.203755 for each five cigarettes or fraction of five cigarettes 5
contained in any package, if

(i) the cigarettes are marked or stamped in accordance with the
Tobacco Tax Act, R.S.O. 1990, c. T.10, to indicate that they are
intended for retail sale in the Province of Ontario, or

(ii) the cigarettes are black stock delivered by their manufacturer 10
to a supplier who has a permit under section 9 of the *Tobacco Tax*
Act, R.S.O. 1990, c. T.10, to sell black stock cigarettes and the
supplier certifies to the manufacturer, in the prescribed form and
manner, that the cigarettes are intended for resale in accordance
with that Act to on-reserve retailers (as defined in subsection 15
60(4)),

(b) \$0.193755 for each five cigarettes or fraction of five cigarettes
contained in any package, if the cigarettes are marked or stamped in
accordance with the *Tobacco Tax Act*, R.S.Q., c. I-2, to indicate that
they are intended for retail sale in the Province of Quebec; 20

(c) \$0.253755 for each five cigarettes or fraction of five cigarettes
contained in any package, if

(i) the cigarettes are marked or stamped in accordance with
Part III of the *Revenue Act*, S.N.S. 1995-96, c. 17, to indicate that
they are intended for retail sale in the Province of Nova Scotia, or 25

(ii) the cigarettes are black stock delivered by their manufacturer
to a designated wholesale vendor (as defined in subsection 61(4))
and the designated wholesale vendor certifies to the manufacturer,
in the prescribed form and manner, that the cigarettes are intended
for resale to designated retail vendors (as defined in subsection 30
61(4));

(d) \$0.248755 for each five cigarettes or fraction of five cigarettes
contained in any package, if the cigarettes are marked or stamped in
accordance with the *Tobacco Tax Act*, R.S.N.B. 1973, c. T-7, to
indicate that they are intended for retail sale in the Province of 35
New Brunswick;

(e) \$0.253755 for each five cigarettes or fraction of five cigarettes contained in any package, if

(i) the cigarettes are marked or stamped in accordance with Part III of the *Revenue Act*, S.N.S. 1995-96, c. 17, to indicate that they are intended for retail sale in the Province of Nova Scotia and are delivered by their manufacturer to a wholesale vendor licensed as such under the *Health Tax Act*, R.S.P.E.I. 1988, c. H-3, and 5

(ii) the wholesale vendor certifies to the manufacturer, in the prescribed form and manner, that the cigarettes are intended for retail sale in the Province of Prince Edward Island in accordance with *Health Tax Act*, R.S.P.E.I. 1988, c. H-3; and 10

(f) \$0.271255 for each five cigarettes or fraction of five cigarettes contained in any package, in any other case.

2. Tobacco sticks: 15

(a) \$0.027583 per stick, if

(i) the tobacco sticks are marked or stamped in accordance with the *Tobacco Tax Act*, R.S.O. 1990, c. T.10, to indicate that they are intended for retail sale in the Province of Ontario, or

(ii) the tobacco sticks are black stock delivered by their manufacturer to a supplier who has a permit under section 9 of the *Tobacco Tax Act*, R.S.O. 1990, c. T.10, to sell black stock cigarettes and the supplier certifies to the manufacturer, in the prescribed form and manner, that the tobacco sticks are intended for resale in accordance with that Act to on-reserve retailers (as defined in subsection 60(4)); 20 25

(b) \$0.027583 per stick, if the tobacco sticks are marked or stamped in accordance with the *Tobacco Tax Act*, R.S.Q., c. I-2, to indicate that they are intended for retail sale in the Province of Quebec;

(c) \$0.030983 per stick, if the tobacco sticks are marked or stamped in accordance with the *Tobacco Tax Act*, R.S.N.B. 1973, c. T-7, to indicate that they are intended for retail sale in the Province of New Brunswick; and 30

(d) \$0.032983 per stick, in any other case.

3. Manufactured tobacco other than cigarettes and tobacco sticks: 35

(a) \$19.981 per kilogram, if

(i) the manufactured tobacco is marked or stamped in accordance with the *Tobacco Tax Act*, R.S.O. 1990, c. T.10, to indicate that it is intended for retail sale in the Province of Ontario, or

(ii) the manufactured tobacco is black stock delivered by its manufacturer to a supplier who has a permit under section 9 of the *Tobacco Tax Act*, R.S.O. 1990, c. T.10, to sell black stock cigarettes and the supplier certifies to the manufacturer, in the prescribed form and manner, that the manufactured tobacco is intended for resale in accordance with that Act to on-reserve retailers (as defined in subsection 60(4)); and

(b) \$28.981 per kilogram, in any other case.

4. Cigars, \$14.786 per 1,000 cigars.

5. Raw leaf tobacco, \$1.572 per kilogram.

Schedule 2

(Section 42)

CIGARS

1. Cigars:

The greater of

5

(a) \$0.03947 per cigar; and

(b) 50%, computed on

(i) the sale price, in the case of cigars manufactured in Canada, or

(ii) the duty-paid value, in the case of imported cigars.

Schedule 3

(Section 50)

SPECIAL DUTY

1. Special duty:

- (a) \$0.04 per cigarette, in the case of cigarettes; 5
- (b) \$0.02667 per stick, in the case of tobacco sticks; and
- (c) \$26.667 per kilogram, in the case of tobacco products other than cigarettes or tobacco sticks.

Schedule 4

(Sections 119 and 120)

WINE

1. Wine:

(a) in the case of wine that contains not more than 1.2% of absolute ethyl alcohol by volume, \$0.0205 per litre; 5

(b) in the case of wine that contains more than 1.2% of absolute ethyl alcohol by volume but not more than 7% of absolute ethyl alcohol by volume, \$0.2459 per litre; and

(c) in the case of wine that contains more than 7% of absolute ethyl alcohol by volume, \$0.5122 per litre. 10

Explanatory Notes

Published by
The Honourable Paul Martin, P.C., M.P.
Minister of Finance

These explanatory notes are provided to assist in an understanding of the legislative proposals for a new framework for the taxation of spirits, wine and tobacco products. These notes are intended for information purposes only and should not be construed as an official interpretation of the provisions they describe.

PREFACE

These explanatory notes describe the legislative proposals for a new framework for the taxation of spirits, wine and tobacco products.

The Honourable Paul Martin
Minister of Finance

EXPLANATORY NOTES¹

Interpretation

Section 2 – Definitions

“account”

“Account” means to account for spirits and wine in the records of a person.

“accredited representative”

An “accredited representative” is a person who is a foreign diplomatic agent entitled to the tax exemptions specified in article 34 of the Vienna Convention on Diplomatic Relations (Schedule I to the *Foreign Missions and International Organizations Act*) or a person who is a consular official entitled to the tax exemptions specified in article 49 of the Vienna Convention on Consular Relations (Schedule II to the *Foreign Missions and International Organizations Act*).

“alcohol”

“Alcohol” refers to spirits and wine, which are both subject to duty under the Act.

“alcohol licensee”

An “alcohol licensee” is a person who holds an alcohol licence issued under section 13 and is authorized to produce, package or denature spirits, or to produce or package wine.

1. The draft legislation does not reflect measures that were announced in the February 1999 budget.

Where a proposed provision in the draft legislation is based on a provision in an existing tax statute, the existing provision is referenced in parentheses at the end of the relevant explanatory note.

“alcohol registrant”

An “alcohol registrant” is a person who holds an alcohol registration issued under section 16 and is authorized to store or transport bulk alcohol and specially denatured spirits.

“analyst”

A person or class of persons may be designated as an “analyst” for purposes of the Act. An analyst may issue a certificate or report setting out the results of the analyst's analysis or examination of an item. Under section 279, an analyst's certificate or report is admissible in evidence in a prosecution for an offence under the Act.

“assessment”

The Minister may make an “assessment” of duty, interest or other amount payable by any person under the Act. The Minister may also make an assessment of the amount of a refund payable to a person. An assessment for the purposes of the Act includes a reassessment.

“authorized person”

An “authorized person” is a person authorized by the Minister for the purposes of section 11 (an inquiry concerning the administration and enforcement of the Act), section 191 (solicitor-client privilege) or section 236 (inspection, audit and examination of records and property). For the purposes of section 192 (use and disclosure of confidential information), an authorized person means a person presently or formerly employed or engaged in carrying out the provisions of the Act.

“beer”

“Beer” has the same meaning as under the current *Excise Act*.

“black stock”

“Black stock” refers to manufactured tobacco that is stamped with a tobacco stamp, but is not marked in accordance with a provincial

statute to indicate that the manufactured tobacco is for sale in a particular province.

“black stock cigarettes”

“Black stock cigarettes” are cigarettes that are stamped with a tobacco stamp, but not marked in accordance with a provincial statute to indicate that they are for sale in a particular province.

“black stock manufactured tobacco”

“Black stock manufactured tobacco” refers to black stock other than cigarettes and tobacco sticks.

“bottle-your-own premises”

“Bottle-your-own premises” refers to premises where wine is supplied from a marked special container for the purpose of bottling by a purchaser. A marked special container of wine is a container of wine greater than 50 litres but not more than 2000 litres that is deemed to be packaged wine (see definition of “packaged”).

“bulk”

“Bulk” in relation to spirits and wine means that the spirits or wine have not been packaged for consumption or have not been packaged in a marked special container (see definition of “packaged”, “marked” and “special container”).

“cigar”

The use of the term “cigar” for purposes of the *Excise Act, 1999* is the same as the current *Excise Act*. Unlike other tobacco products, cigars are subject to both a specific duty imposed by section 41 and a specific or *ad valorem* duty imposed by section 42.

“cigarette”

The use of the term “cigarette” for the purposes of the *Excise Act, 1999* is the same as the current *Excise Act*.

“container”

A “container” of tobacco products means any type of container containing tobacco products.

“customs bonded carrier”

A “customs bonded carrier” is a carrier that is bonded under the *Customs Act*.

“customs bonded warehouse”

A “customs bonded warehouse” is a place licensed as a bonded warehouse under the *Customs Tariff*. Duty imposed on goods delivered to a customs bonded warehouse is not payable until the goods are removed from the warehouse.

“customs bonded warehouse licensee”

A “customs bonded warehouse licensee” is a person who holds a licence issued under the *Customs Tariff* to operate a place as a customs bonded warehouse.

“denature”

Spirits are “denatured” using prescribed denaturants in the prescribed manner. Spirits may be denatured into prescribed grades of denatured spirits or specially denatured spirits.

“denatured spirits”

Only prescribed grades of denatured spirits are “denatured spirits” under the Act. The duty imposed by section 108 of this Act or section 21.1 of the *Customs Tariff* on bulk spirits is relieved when spirits are denatured into denatured spirits (see section 117).

“Department”

“Department” refers to the Department of National Revenue. Should the proposed *Canada Customs and Revenue Agency Act* come into force, “Department” will be replaced by “Agency”. Under that Act, “Agency” means the Canada Customs and Revenue Agency established by subsection 4(1) of that Act.

“Deputy Minister”

The “Deputy Minister” is authorized to act in the place of the Minister. Should the proposed *Canada Customs and Revenue Agency Act* come into force, “Deputy Minister” will be replaced by “Commissioner”. Under that Act, “Commissioner ” means the Commissioner of Customs and Revenue appointed under section 25 of that Act.

“duty”

“Duty” includes:

- that imposed under the Act on tobacco products, spirits and wine;
- that imposed by section 21.1 or 21.2 of the *Customs Tariff* on imported bulk spirits and packaged spirits and wine (see definition of “bulk” and “packaged”); and
- except in Parts 3 and 4 of the Act, the special duty imposed by section 50 in the case of exported tobacco products and by section 118 in the case of imported spirits for delivery to a licensed user.

“duty free shop”

“Duty free shop” has the same meaning as under the *Customs Act*.

“duty free shop licensee”

“Duty free shop licensee” is a person licensed under the *Customs Act* to operate a duty free shop.

“duty-paid market”

“Duty-paid market” is the market for the sale of spirits, wine and tobacco products in respect of which duty (other than special duty) is payable.

“duty-paid value”

“Duty-paid value” is used for the purpose of calculating the *ad valorem* duty on imported cigars. Cigars are subject to a specific or *ad valorem* duty imposed by section 42 in addition to the duty imposed on cigars by section 41.

“excise warehouse”

An “excise warehouse” means one or more specified premises of an excise warehouse licensee where the licensee can store non-duty-paid packaged alcohol or tobacco products that are not stamped with a tobacco stamp. While packaged alcohol intended both for the duty-paid and duty-free markets can be entered into an excise warehouse, only tobacco products intended for export or the duty-free market can be entered into such a warehouse.

“excise warehouse licensee”

An “excise warehouse licensee” is a person who holds an excise licence issued under section 18 and is authorized to possess in the person's excise warehouse non-duty-paid packaged alcohol or tobacco products that are not stamped with a tobacco stamp.

“export”

“Export” means exportation out of Canada.

“ferment-on-premises facility”

“Ferment-on-premises facility” means the specified premises of a ferment-on-premises registrant where individuals can produce and package wine for their personal use. Individuals who produce and package wine for personal use at a ferment-on-premises facility are not required to be licensed (see subsection 63(2)) and the individual's wine is not subject to duty (see section 121).

“ferment-on-premises registrant”

A “ferment-on-premises registrant” is an operator of a ferment-on-premises facility who is registered under the Act in order to possess, at the registrant's facility, bulk wine produced by an individual for the individual's personal use.

“fiscal month”

A “fiscal month” is the period a person may select under section 140 for purposes of reporting and paying duty.

“Her Majesty”

The term “Her Majesty” is used to refer to the Crown in its federal capacity as distinct from the Crown in right of the provinces.

“import”

“Import” means importation into Canada.

“Indian”

“Indian” means a person who is registered under the *Indian Act* and is used in the Act in connection with tobacco products that are black stock.

“intoxicating liquor”

“Intoxicating liquor” has the same meaning as in the *Importation of Intoxicating Liquors Act*.

“judge”

“Judge” refers to a judge of the Federal Court or a superior court where a matter under the Act is to be dealt with.

“licensed tobacco dealer”

A “licensed tobacco dealer” is a person who holds a licence issued under section 13 and is authorized to engage in the business of buying and selling raw leaf tobacco on which duty is not imposed, without taking possession of the tobacco.

“licensed user”

“Licensed users” (persons who hold a user's licence issued under section 13) are generally manufacturers who use alcohol in manufacturing or processing other products. Such persons may use alcohol, without the payment of duty, in a product formulation or process approved by the Minister or in the manufacture of vinegar if a minimum standard of production is achieved.

“manufacture”

The “manufacturing” of a tobacco product includes any step in the processing of raw leaf tobacco or manufactured tobacco into a tobacco product. It includes the packaging of raw leaf tobacco or tobacco products.

“manufactured tobacco”

“Manufactured tobacco” refers to all tobacco products except cigars and packaged raw leaf tobacco.

“manufacturer”

“Manufacturer” is defined for purposes of tobacco products to mean a person who manufactures tobacco products. A person who provides equipment at the person's place of business for use by another person in the manufacture of tobacco products is deemed by section 23 to be a manufacturer.

“mark”

A special container of spirits or wine that has been “marked” in the prescribed form and manner is deemed to have been packaged (see sections 75 and 80). A marked special container of spirits or wine may only be used for specific purposes.

“Minister”

The administration and enforcement of the Act rest with the Minister of National Revenue.

“month”

A “month” may be a calendar month or a similar period overlapping two consecutive calendar months.

“non-duty-paid”

This term is used to indicate that the duty on packaged alcohol, other than special duty, has not been paid.

“officer”

An “officer” is a person engaged in the administration and enforcement of the Act. It includes a member of the R.C.M.P. and a member of a police force designated under subsection 8(1).

“packaged”

Duty becomes payable when alcohol and tobacco products are “packaged”. In the case of tobacco, “packaged” means packaged in a prescribed container. In the case of spirits and wine, “packaged” means packaged in either a container ordinarily sold to consumers that is less than a certain size or a marked special container.

“person”

The term “person” is used to refer to individuals and all forms of organizations.

“personal use”

“Personal use” refers to personal consumption by an individual or by others at the expense of the individual. Individuals are authorized under the Act to produce wine and, in certain circumstances, tobacco products without a licence and the payment of duty, provided the wine and tobacco products are for “personal use” (see

subsection 24(2) and paragraph 44(1)(g) in the case of tobacco and subsection 63(2) and section 121 in the case of wine).

“prescribed”

“Prescribed” means authorized by the Minister when referring to a form or the manner of filing a form and, when referring to the information to be given on a form, specified by the Minister. In any other case, it means prescribed by regulation or determined in accordance with rules prescribed by regulation.

“produce”

“Produce” in its application to wine means to produce wine by the fermentation of an agricultural product.

“provincial liquor authority”

“Provincial liquor authority” refers to the governmental organization in a province that is authorized by the laws of the province to market alcohol products to consumers.

“raw leaf tobacco”

“Raw leaf tobacco” has the same meaning as under the current *Excise Act*.

“record”

“Record” is broadly defined to include any document, whether in written or other form. Licensees, registrants, persons required to file returns, persons applying for a refund and persons transporting non-duty-paid packaged alcohol or unstamped tobacco products are required to keep records concerning their operations under the Act.

“registered user”

The Minister may issue a user's registration under section 15 to a research laboratory, university or other post-secondary educational institution, health care facility or health institution permitting it to use non-duty-paid packaged spirits for specific purposes.

“reserve”

“Reserve” refers to an Indian reserve as defined in the *Indian Act*.

“responsible”

The person who is liable for duty on bulk alcohol is the person who is “responsible” for the bulk alcohol in accordance with sections 100 to 107.

In general, duty on spirits and wine becomes payable at the time of packaging and is payable by the person responsible for the alcohol immediately before it was packaged (see sections 110 and 120).

“sale price”

In its application to cigars, “sale price” is used to apply a specific or *ad valorem* duty under section 42 on the basis of the sale price charged by the manufacturer. This is in addition to the duty imposed under section 41 on all tobacco products.

“SDS registrant”

Under the Act, a person must be an “SDS registrant”, holding a specially denatured spirits registration issued under section 17, to use specially denatured spirits (see section 93).

“special container”

A “special container” is a container of a certain size containing bulk alcohol. When a special container is marked (see definition of “mark”), it is deemed to be packaged (see sections 75 and 80).

“special duty”

In addition to regular duty, two “special duties” are imposed by the Act. One applies to tobacco products exported by tobacco licensees (see section 50). The other is imposed on imported spirits for delivery to a licensed user (see section 118).

“special excise warehouse”

A “special excise warehouse” means the specified premises of a special excise warehouse licensee used to store tobacco products that are not stamped with a tobacco stamp for sale to accredited representatives.

“special excise warehouse licensee”

A person holding a licence issued under section 19 to operate a special excise warehouse is a “special excise warehouse licensee”.

“specially denatured spirits”

“Specially denatured spirits” are spirits that have been denatured (see definition of “denature”) into a prescribed grade of specially denatured spirits. An SDS registrant is authorized to use specially denatured spirits.

“specified premises”

The Minister may specify one or more premises where a licensed user is authorized to conduct the user's activities under the licence.

“spirits”

“Spirits” means any substance, other than wine, beer, denatured spirits and specially denatured spirits, that contains absolute ethyl alcohol.

“stamped”

When referring to a tobacco stamp, “stamped” means that the tobacco stamp is, in the prescribed manner, affixed to or impressed upon anything required to be stamped with a tobacco stamp.

“sufferance warehouse”

A “sufferance warehouse” is a warehouse established for the temporary storage of goods under the *Customs Act*.

“sufferance warehouse licensee”

A person is required to hold a licence issued under the *Customs Act* to operate a sufferance warehouse.

“take for use”

When alcohol is “taken for use”, duty becomes payable. Alcohol taken for use means alcohol that is used in any way except

- alcohol used in the fortification of wine (section 116) or the manufacture of vinegar by licensed users (subsection 129(1));
- alcohol used as described in section 128 by alcohol licensees, licensed users or excise warehouse licensees; or
- bulk alcohol treated or packaged by alcohol licensees.

“Tax Court”

“Tax Court” means the Tax Court of Canada. A taxpayer may, under certain conditions, appeal an assessment or reassessment to the Tax Court (see sections 175 and 179).

“tobacco dealer”

“Tobacco dealers” are defined as persons other than tobacco licensees who engage in buying and selling raw leaf tobacco on which duty is not imposed, without taking possession of the tobacco. A tobacco dealer must be licensed in order to engage in the business of buying and selling raw leaf tobacco.

“tobacco licensee”

A “tobacco licensee” is a person licensed under section 13 to manufacture tobacco products.

“tobacco marking”

A “tobacco marking” is prescribed information required to be printed on containers of tobacco products that are not stamped with a tobacco stamp. A tobacco marking is placed on containers of tobacco products intended for export or duty-free sale in Canada.

“tobacco product”

“Tobacco product” refers to all products manufactured from raw leaf tobacco or manufactured tobacco, including cigarettes, cigars, tobacco sticks, fine cut and pipe tobacco, as well as packaged raw leaf tobacco.

“tobacco stamp”

A “tobacco stamp” means prescribed information in a prescribed format required to be stamped on the package of a tobacco product or raw leaf tobacco, or on the product or tobacco. The presence of a tobacco stamp indicates that duty has been paid on the product or tobacco.

“tobacco stick”

“Tobacco stick” has the same meaning as the current *Excise Act* definition.

“wine”

“Wine” is defined as a beverage produced from the alcoholic fermentation of an agricultural product other than grain. Wine under this definition includes sake.

Section 3 – Joint and several possession

In certain specified situations possession of an item by one person is deemed to be possession by other persons, where there is knowledge of and consent to the person's possession. Furthermore, in some situations possession is given an extended meaning to include possession by another person or having in a place for one's own use or benefit or the use or benefit of another person.

Section 4 – Arm's length

Related persons are considered not to be dealing at arm's length with each other. It is a question of fact whether at a particular time unrelated persons are dealing at arm's length. (Subsection 2(2.1), *Excise Tax Act*)

PART 1

GENERAL

Application to Her Majesty

Section 5 – Act binding on Her Majesty

The Act applies to the federal government and to the provincial governments.

Administration and Officers

Section 6 – Minister's duty

The Minister has responsibility for the administration and enforcement of the Act and the control and supervision of all persons employed for that purpose.

Section 7 – Officers and employees

This section provides for the appointment or employment of persons necessary to administer and enforce the Act. The Minister may authorize a designated officer, agent or class of officers to exercise the powers and duties of the Minister.

Section 8 – Designation of police forces

Section 8 authorizes the Minister and the Solicitor General of Canada to designate any police force in Canada for the purposes of enforcing any provision of the Act. (Section 66, *Excise Act*)

Section 9 – Designation of analysts

The Minister is authorized to designate a person or class of persons as an analyst. A certificate or report made by an analyst is admissible in evidence under section 279.

Section 10 – Administration of oaths

The Minister may designate any person employed in connection with the administration and enforcement of the Act to administer oaths and receive affidavits, declarations and affirmations related to the administration or enforcement of the Act or the regulations.

Inquiries

Section 11 – Authorization of inquiry

This section establishes a procedure for holding inquiries into matters concerning the administration or enforcement of the Act. The Minister may authorize a person to make an inquiry and where a person is so authorized the Minister shall seek, by application to the Tax Court, the appointment of a hearing officer. The hearing officer has the powers conferred on a commissioner under sections 4, 5 and 11 of the *Inquiries Act*. The section also specifies the rights of persons giving evidence at an inquiry and of persons being investigated. (Section 276, *Excise Tax Act*)

Interest

Section 12 – Compounding

Interest calculated at a prescribed rate is to be compounded daily. The prescribed rate of interest will be the same as the rate prescribed for purposes of the *Income Tax Act*.

PART 2

LICENCES AND REGISTRATIONS

The new excise duty framework distinguishes between licensees, who are taxpayers, and registrants, who are not taxpayers but who are required for revenue protection purposes to comply with the record-keeping requirements of the Act.

Licences

Section 13 – Issuance

This section establishes four classes of licences.

- An alcohol licence authorizes the licence holder to produce, package or denature spirits or produce or package wine.
- A user's licence authorizes the licence holder to use bulk alcohol or non-duty-paid packaged alcohol.
- A tobacco licence authorizes the licence holder to manufacture tobacco products.
- A tobacco dealer's licence authorizes the licence holder to carry on the business of a tobacco dealer (see definition of “tobacco dealer”).

Registrations

Section 14 – Ferment-on-premises registration

A ferment-on-premises registration authorizes a ferment-on-premises registrant to operate a ferment-on-premises facility where individuals can produce and package wine for their personal use. A ferment-on-premises registrant is permitted to possess, at the registrant's facility, bulk wine produced by individuals. Individuals who produce and package wine at these facilities do not have to be licensed and are not required to pay duty on the wine.

Section 15 – User's registration

A user's registration entitles a registered user to use non-duty-paid packaged spirits for specific purposes. Registered users include scientific and research laboratories, universities and other

post-secondary educational institutions, health care facilities and health institutions.

Section 16 – Alcohol registration

The Act regulates the possession of bulk alcohol and specially denatured spirits. An alcohol registration authorizes an alcohol registrant to store or transport bulk alcohol and specially denatured spirits.

Section 17 – SDS registration

Duty does not apply to specially denatured spirits. However, because spirits can be recovered from specially denatured spirits, controls are imposed on the possession and use of specially denatured spirits. An SDS registration authorizes an SDS registrant to possess and use specially denatured spirits for non-beverage purposes.

Excise Warehouses

An excise warehouse licence entitles the licence holder to possess in the licence holder's excise warehouse non-duty-paid packaged alcohol and tobacco products that are not stamped with a tobacco stamp. Packaged spirits and wine may be stored in an excise warehouse whether the spirits or wine are intended for the duty-paid market, duty-free sale or for export. In the case of tobacco, however, only tobacco products intended for the duty-free market or export may be stored in an excise warehouse.

Section 18 – Issuance of licence

The Minister may issue an excise warehouse licence to an alcohol or tobacco licensee, a provincial liquor authority, a person who supplies ships' stores or any other person who is not a retailer of alcohol.

Special Excise Warehouses

Section 19 – Issuance of licence

A special excise warehouse licence may be issued to a person authorized by a tobacco licensee to be the sole distributor of the licensee's tobacco products to accredited representatives. The licence

authorizes the licence holder to store duty-free tobacco products intended for sale to accredited representatives in the licensee's special excise warehouse.

Section 20 – Return of tobacco products

This section deals with the situation where a tobacco licensee ceases to authorize a special excise warehouse licensee to be the distributor of the tobacco licensee's products to accredited representatives.

General

Section 21 – Refusal to issue licence or registration

The Minister may refuse to issue a licence or registration where, in the opinion of the Minister, it is not in the public interest. The Minister may, subject to the regulations, amend, suspend, renew, cancel, or reinstate a licence or registration. When the Minister issues a licence or registration, or at any later time, the Minister may specify the activities that may be carried on under the licence or registration, the premises where those activities may be carried on and any other conditions.

Section 22 – Compliance with Act and regulations

A licensee or registrant is required to carry on activities under the licence or registration in compliance with the Act and the regulations.

PART 3

TOBACCO

Regulation of Tobacco

The Act places restrictions on the possession and use of raw leaf tobacco and tobacco products that are not stamped with a tobacco stamp. Subject to limited exceptions, only tobacco growers and tobacco licensees may have raw leaf tobacco in their possession. Tobacco products that are not stamped with a tobacco stamp are required to be marked in the prescribed manner and entered into an excise warehouse or, in the case of imported tobacco products, an excise warehouse or customs bonded warehouse, for subsequent removal for export or delivery to the duty-free market.

Section 23 – Deemed manufacturer

This section deems a person who provides equipment to a customer to manufacture the customer's own tobacco products in the person's place of business to be a manufacturer of tobacco products for purposes of the Act. The deemed manufacturer is liable to pay the duty on the tobacco products manufactured by the customer.

Section 24 – Tobacco manufacturing

Subsection 24(1) prohibits a person other than a tobacco licensee from manufacturing tobacco products or providing in the person's place of business equipment for the purpose of manufacturing tobacco products by another person.

Exceptions to subsection 24(1) include an individual who manufactures tobacco products for the individual's own use from duty-paid tobacco or from raw leaf tobacco grown on the individual's land not in excess of the quantities set out in paragraph 24(2)(b). Duty is not payable on tobacco products manufactured and disposed of by individuals in accordance with subsection 24(2) (see paragraph 44(1)(g)).

Section 25 – Tobacco dealer

This section prohibits anyone from buying, selling or offering to sell raw leaf tobacco on which duty is not imposed except in accordance with a tobacco licence or tobacco dealer's licence. If the person takes possession of the raw leaf tobacco, the person is required to hold a tobacco licence. If the person deals in raw leaf tobacco without taking possession, the person is required to hold a tobacco dealer's licence.

Tobacco growers are, however, authorized under section 30 to deal in raw leaf tobacco without being licensed.

Section 26 – Unlawful packaging or stamping

A person is prohibited from packaging or stamping tobacco products or raw leaf tobacco unless the person is a tobacco licensee or the owner or importer of tobacco products or raw leaf tobacco that are placed in a sufferance warehouse for the purpose of being stamped. (Subsection 233(1), *Excise Act*)

Section 27 – Unlawful removal

Subsection 27(1) prohibits anyone from removing tobacco products or raw leaf tobacco from the premises of a tobacco manufacturer unless the tobacco is packaged. As well, if the tobacco is intended for the duty-paid market, it must be stamped with a tobacco stamp. If it is for export or the Canadian duty-free market, it is required to be marked.

Subsection 27(2) provides an exception for tobacco licensees who remove partially manufactured tobacco from their premises. (Subsection 235(1), *Excise Act*)

Section 28 – Prohibition – certain tobacco products for sale, etc.

This section prohibits any person from purchasing or receiving for sale tobacco products from unlicensed tobacco manufacturers, tobacco products that are not packaged and stamped in accordance with the Act, or fraudulently stamped tobacco products. (Sections 237, 237.1 and 238, *Excise Act*)

Section 29 – Selling etc., unstamped raw leaf tobacco

Any person other than a tobacco licensee is prohibited from possessing, offering to sell, selling or purchasing raw leaf tobacco that is not packaged and stamped with a tobacco stamp.

The exceptions to the restrictions include the possession of raw leaf tobacco in a customs bonded warehouse or sufferance warehouse by the warehouse operator and the sale, offer for sale or purchase of raw leaf tobacco by licensed tobacco dealers.

Limited additional exceptions are provided in section 30 for tobacco growers. (Subsection 225(1), *Excise Act*)

Section 30 – Exceptions to sections 25 and 29

This section exempts tobacco growers from the restrictions specified in sections 25 and 29 to the extent that they are carrying on specified activities related to raw leaf tobacco.

Section 31 – Unlawful possession or sale of tobacco products

As a general rule, packaged tobacco products must be stamped with tobacco stamps. There are, however, limited exceptions. Section 31 specifies the circumstances under which a person may possess, sell, or offer for sale unstamped tobacco products. (Subsection 239.1(2), *Excise Act*)

Section 32 – No sale or distribution except in original package

This section prohibits any person from selling, offering to sell or distributing free of charge for advertising purposes, a tobacco product except in its original package stamped with a tobacco stamp. (Subsection 240(5), *Excise Act*)

Section 33 – Packaging and stamping of tobacco

This section prohibits a tobacco licensee from entering the tobacco products the licensee manufactures into the duty-paid market, unless the products have been packaged and stamped with tobacco stamps by the licensee and have prescribed information printed on the

packages. The tobacco products are required to be stamped at the time of packaging. (Subsection 235(1), *Excise Act*)

Section 34 – Packaging and stamping of imported tobacco

Section 34 requires that all imported raw leaf tobacco and tobacco products for the duty-paid market be packaged and stamped with a tobacco stamp before they are released under the *Customs Act*.

A tobacco licensee may, however, import unstamped raw leaf tobacco or manufactured tobacco for further manufacture. As well, the stamping requirement does not apply to individuals who import tobacco products in limited quantities for their personal use. (Subsections 201(2) and (3), *Excise Act*)

Section 35 – Absence of stamps – Notice

The absence of a tobacco stamp on a tobacco product, raw leaf tobacco, or package of those items, as required by the Act, is notice to everyone that duty has not been paid on those goods. (Subsection 239.1(1), *Excise Act*)

Section 36 – Unstamped products to be warehoused

This section requires that all packaged tobacco products that are not stamped by a tobacco licensee with a tobacco stamp must be immediately entered into the licensee's excise warehouse.

Section 37 – Marking

This section prohibits anyone from entering a container of tobacco products into an excise warehouse unless the container has prescribed tobacco markings and other prescribed information printed on it.

The section also prohibits anyone from delivering a container of imported tobacco products to a customs bonded warehouse, an accredited representative or to a duty free shop unless the container has prescribed tobacco markings and other prescribed information printed on it. There are, however, limited exemptions from the marking requirements for particular brands of tobacco products. (Section 202, *Excise Act*)

Section 38 – Non-compliant imports

Imported tobacco products or raw leaf tobacco intended for the duty-paid market that are not stamped at the time of importation must be placed in a sufferance warehouse for the purpose of stamping.

(Section 204, *Excise Act*)

Section 39 – Removal of raw leaf tobacco or waste tobacco

Only a tobacco licensee may remove raw leaf or waste tobacco from the licensee's premises. The raw leaf or waste tobacco so removed shall be dealt with in the manner authorized by the Minister.

(Sections 208 and 212, *Excise Act*)

Section 40 – Re-working or destruction of tobacco

The Minister may authorize the manner in which tobacco products may be re-worked or destroyed by a tobacco licensee. As well, the Minister may authorize a tobacco licensee to import tobacco products that were manufactured by the licensee in Canada, for re-working or destruction in the authorized manner. The tobacco products may be imported on a duty-free basis under paragraph 44(1)(f). (Section 207, *Excise Act*)

Duty on Tobacco

Duty is imposed by section 41 on all domestically produced and imported tobacco products and on imported raw leaf tobacco. The duty is payable at the time of packaging, in the case of domestically produced tobacco products, and under the *Customs Act*, in the case of imported tobacco products and raw leaf tobacco. Section 42 imposes an additional duty on cigars that is identical to the current excise tax on cigars. The duty imposed by sections 41 and 42 is not payable on tobacco products intended for export or the duty-free market and on tobacco imported by a tobacco licensee for further processing.

Section 41 – Imposition

This is the general imposition of duty section for all tobacco products and for imported raw leaf tobacco.

For tobacco products manufactured in Canada, the duty is payable by the manufacturer at the time the products are packaged. Raw leaf tobacco that is to be sold in the duty-paid market is considered to be a tobacco product at the time it is packaged (see definitions of “tobacco product” and “package”).

For imported raw leaf tobacco and tobacco products, the duty is payable by the importer, owner or other person liable to pay duty under the *Customs Act*.

The rates of duty are set out in Schedule 1. Except in the case of cigars and raw leaf tobacco, they combine the current excise duty and excise tax rates into a single rate for each category of tobacco product. (Section 200, *Excise Act*)

Section 42 – Additional duty on cigars

The duty imposed on cigars by this section is a specific or *ad valorem* duty that replaces the current specific or *ad valorem* excise tax on cigars. The structure of the additional duty on cigars is identical to that under the current *Excise Tax Act*. In the case of cigars manufactured and sold in Canada, the duty is payable at the time the manufacturer delivers the cigars to a purchaser (paragraph 42(a)). In the case of imported cigars, the duty is payable by the importer, owner or other person liable to pay duty under the *Customs Act* (paragraph 42(b)). (Section 23(1), *Excise Tax Act*)

Section 43 – Application of *Customs Act*

This section provides that the duty on imported raw leaf tobacco and tobacco products imposed under sections 41 and 42 must be paid and collected under the *Customs Act* as if the duty were a duty under the *Customs Tariff*.

Section 44 – Duty not payable

This section specifies the situations where the duty imposed on tobacco products by sections 41 and 42 is not payable. The duty is not payable on tobacco products:

- entered into an excise warehouse,
- imported by an accredited representative or by a duty-free shop licensee,
- imported and entered into a customs bonded warehouse or for use as ships' stores,
- imported by the tobacco licensee who manufactured them for reworking or destruction by the licensee, or,
- manufactured by an individual for personal use.

The duty imposed by section 41 is also not payable on raw leaf tobacco and manufactured tobacco that is imported by a tobacco licensee for further manufacturing by that licensee. This new provision replaces the current *Manufactured Tobacco Imported for Further Manufacture Remission Order*.

Excise Warehouses

Only tobacco products that are not stamped with a tobacco stamp may be entered into an excise warehouse. Tobacco products may only be removed from an excise warehouse for export or delivery to the duty-free market.

Section 45 – Restriction – entering tobacco

This section prohibits any person from entering tobacco products stamped with a tobacco stamp into an excise warehouse. Only tobacco products destined for the duty-free market or for export can be entered into an excise warehouse.

It also prohibits any person from entering unstamped tobacco products into an excise warehouse except in accordance with the Act and regulations. In particular, tobacco products entered into an excise warehouse are required to have tobacco markings on them. (see section 37).

Section 46 – Removal of domestic products

Tobacco products manufactured in Canada may only be removed from an excise warehouse of a tobacco licensee for delivery to accredited representatives, as ships' stores, to a duty free shop, to a special excise warehouse, to another excise warehouse for delivery as ships' stores, or for export. Tobacco products may only be removed

from a special excise warehouse for delivery to accredited representatives.

This section is consistent with the duty-relief provisions in section 44 and the possession and sale exemptions under subsections 31(2) and (3). (Section 58, *Excise Act*)

Section 47 – Removal of imported products

Imported tobacco products may only be removed from an excise warehouse for delivery to another excise warehouse, accredited representatives, as ships' stores, to a duty free shop or for export.

This section is consistent with the current provisions for imported tobacco products in the *Customs Act* and *Customs Tariff*.

Section 48 – Restriction – special excise warehouse

A special excise warehouse licensee may only store duty-free tobacco products in the licensee's warehouse for the purpose of selling them to accredited representatives. (Paragraph 50(1)(c), *Excise Act*)

Special Duty on Exported Tobacco Products

The special duty on exported tobacco products replaces the current excise tax on exported tobacco products imposed under section 23.2 of the *Excise Tax Act*. The structure of the duty is identical to that of the excise tax.

Section 49 – Definition of “tobacco product”

This section narrows the definition of tobacco product for the purpose of the special duty on exported Canadian tobacco products (sections 50 to 53) to exclude cigars and partially manufactured tobacco. (Section 23.1, *Excise Tax Act*)

Section 50 – Imposition

This section imposes a special duty, at the rates set out in Schedule 3, on tobacco products that are manufactured and exported from Canada by a tobacco licensee. Subject to sections 51 to 53, the duty is

payable by the licensee at the time the tobacco products are exported. (Section 23.2, *Excise Tax Act*)

Section 51 – Exemption for limited exports

A tobacco licensee may export up to 3% of the previous calendar year's production of each category of tobacco product (i.e. cigarettes, tobacco sticks, manufactured tobacco) without payment of the special duty imposed by section 50.

The quantity of tobacco products that may be exported under the 3% exemption does not include tobacco products that are exempted under sections 52 and 53 or in respect of which a refund of the special duty was made under section 161. (Section 23.21, *Excise Tax Act*)

Exported Tobacco Products Exemptions

Section 52 – Exemption – tobacco products for sale in foreign duty free shop

This section exempts from the special duty on exports of Canadian tobacco products those products supplied to a foreign duty free shop for sale in that shop. (Section 23.22, *Excise Tax Act*)

Section 53 – Exemption – prescribed tobacco product

A tobacco product of a particular brand is exempt from the special duty on exported tobacco products if the tobacco product of that brand is prescribed in regulations and the product has only ever been sold in Canada in very limited quantities. As well, the special duty is not payable on prescribed cigarettes that are sold abroad and in Canada under the same brand name, where the prescribed cigarettes are of a type or formulation that has never been sold in Canada. (Section 23.3, *Excise Tax Act*)

Duty on Unauthorized Tobacco Sales

In addition to penalties for unauthorized sales, sections 54 to 61 impose duty on tobacco products that are marked for sale in a particular province or are black stock tobacco products and are diverted to another province or to an unauthorized purchaser.

The duty imposed by these sections is equal to the difference between the regular rate of duty on the tobacco products set out in paragraphs 1(f), 2(d) or 3(b) of Schedule 1 and the reduced rate that was paid on the black stock or provincially marked tobacco products. The duty is payable at the time the tobacco products are sold in another province or to an unauthorized purchaser and is payable by the person who sold the products.

Sections 54 to 61 – Duty on unauthorized tobacco sales

Section 54 imposes a duty on manufactured tobacco that is marked for sale in the province of Ontario and diverted to another province or sold to an unauthorized person. (Section 23.31, *Excise Tax Act*)

Section 55 imposes a duty on cigarettes and tobacco sticks that are marked for sale in the province of New Brunswick or Quebec and diverted to another province or sold to an unauthorized purchaser. (Section 23.32, *Excise Tax Act*)

Section 56 imposes a duty on cigarettes that are marked for sale in the province of Nova Scotia and diverted to another province, except in certain circumstances to Prince Edward Island, or sold to an unauthorized person. (Section 23.33, *Excise Tax Act*)

Section 58 imposes duty on cigarettes marked for sale in Nova Scotia when a PEI licensed wholesaler sells those cigarettes to a person other than a retailer or consumer in Prince Edward Island. (Nova Scotia markings are used for tobacco products for sale in PEI.) (Section 23.34, *Excise Tax Act*)

Section 59 imposes duty on cigarettes or tobacco sticks marked for sale in Nova Scotia when a PEI licensed retailer sells those cigarettes or tobacco sticks to a person other than another licensed retailer or consumer in Prince Edward Island. (As previously noted, Nova Scotia markings are used for tobacco products for sale in PEI.) (Section 23.341, *Excise Tax Act*)

Under section 60, if an authorized wholesaler in Ontario sells to an on-reserve retailer a quantity of black stock that is in excess of what the retailer is entitled to purchase in accordance with provincial law, duty is imposed on the excess quantity of manufactured tobacco. This section also imposes duty on black stock that is sold by an

authorized wholesaler in Ontario to a person who is neither an on-reserve retailer nor an Indian consumer resident on a reserve in Ontario. (Section 23.35, *Excise Tax Act*)

Section 61 imposes duty on the quantity of black stock cigarettes that is sold by a designated wholesaler in Nova Scotia to an on-reserve retailer that is in excess of what the retailer is entitled to purchase in accordance with provincial legislation. This section also imposes duty on black stock cigarettes that are sold by a designated wholesaler in Nova Scotia to a person other than an on-reserve retailer or an Indian consumer resident on a reserve in Nova Scotia. (Section 23.36, *Excise Tax Act*)

PART 4

ALCOHOL

General

The production, packaging or denaturing of spirits, or the production or packaging of wine may only be undertaken in accordance with an alcohol licence. However, certain exceptions apply for wine produced by an individual for personal use.

The *Importation of Intoxicating Liquors Act* continues to apply to the importation of alcohol into a province.

Section 62 – Application of *Importation of Intoxicating Liquors Act*

This section affirms the application of the *Importation of Intoxicating Liquors Act (IILA)* to the importation of alcohol into a province. The *IILA* is a federal statute that provides support for provincial controls on the distribution of alcohol imported into a province.

Section 63 – Prohibition – production etc.

Only an alcohol licensee may produce or package spirits or wine, or denature spirits. There are, however, three exceptions to this rule. Individuals producing wine for their personal use, individuals packaging that wine for their personal use, and persons packaging wine from a marked special container of wine at a bottle-your-own premises are not required to be licensed.

Section 64 – Prohibition – sale of wine produced for personal use

Wine that was produced or packaged by an individual for personal use may not be sold or put to another commercial use.

Section 65 – Wine produced by individual

The exception to the general licensing requirement for individuals producing or packaging wine for personal use is limited to individuals who actually produce or package the wine themselves. Any person who produces or packages wine on behalf of an individual will be required to be licensed.

Section 66 – Prohibition – ferment-on-premises facility

This section prohibits a person from carrying on, at a ferment-on-premises facility, any activity specified in a licence or registration under the Act other than an activity authorized under a ferment-on-premises registration.

Section 67 – Application – in-transit and transhipped alcohol

This section specifies that imported alcohol and specially denatured spirits shipped by a customs bonded carrier through Canada or stored in Canada in a sufferance or customs bonded warehouse en route to a foreign destination are not subject to the restrictions on bulk alcohol, non-duty-paid packaged alcohol and specially denatured spirits set out in sections 68 (ownership of bulk alcohol), 69 (possession of bulk alcohol), 70 (supply of bulk alcohol), 73 (importation of bulk alcohol), 74 (exportation of bulk alcohol), 82 (marking imported special container of wine), 85 (possession of non-duty-paid packaged alcohol), 94 (possession of SDS), 95 (supply of SDS), 97 (importation of SDS) and 98 (exportation of SDS).

Bulk Alcohol

As a general rule, duty is not payable on bulk alcohol prior to packaging. As a result, controls are placed on the ownership, possession and disposition of bulk alcohol. These restrictions are specified in sections 68 to 74.

Section 68 – Prohibition – ownership

A person may only own bulk alcohol that is produced in Canada by an alcohol licensee or is imported into Canada by an alcohol licensee or a licensed user.

The two exceptions to this rule involve ownership of bulk wine produced by an individual for the individual's personal use, and ownership of alcohol contained in an unmarked special container imported by a person who is not an alcohol licensee or licensed user and placed in a sufferance warehouse for the purpose of marking the container in accordance with section 78 or 82. The individual may own the bulk wine and the importer may own the bulk alcohol even though they are neither an alcohol licensee nor a licensed user.

Section 69 – Prohibition – possession

Because duty is generally not payable on wine and spirits prior to packaging, one of the basic features of the new excise system is the existence of strict controls on the possession of bulk alcohol.

This section sets out who may possess bulk wine and spirits and the conditions for the possession of bulk alcohol.

- An alcohol licensee, licensed user or alcohol registrant may possess bulk wine and spirits produced or imported by an alcohol licensee.
- A licensed user or alcohol registrant may possess bulk wine and spirits imported by the licensed user.
- A sufferance warehouse licensee may possess at the licensee's sufferance warehouse bulk alcohol imported by an alcohol licensee or licensed user, or a special container of alcohol placed in the warehouse to be marked.
- A ferment-on-premises registrant may possess bulk wine produced at the registrant's premises by an individual for the individual's personal use.
- An individual may, at the individual's residence, possess bulk wine produced by an individual for the individual's personal use.
- An individual may transport bulk wine from a residence to another residence or from a ferment-on-premises facility to a residence, where the wine was produced by an individual for the individual's personal use.

Section 70 – Prohibition – supply

In keeping with the restrictions on possession contained in section 69, a person may only supply bulk alcohol to an alcohol licensee, a licensed user or an alcohol registrant. This restriction does not, however, apply to an individual who supplies bulk wine produced by an individual for personal use.

Section 71 – Restriction – alcohol registrant

An alcohol registrant may only transport and store bulk alcohol.

Section 72 – Restriction – licensed user

This section restricts licensed users as to their use and disposal of bulk alcohol. A licensed user can only use bulk alcohol for any use other than in or for a beverage, return it to the supplying alcohol licensee, export it if it was imported by the licensed user, or destroy it in a manner approved by the Minister.

Section 73 – Importation – bulk alcohol

Subject to exceptions for unmarked special containers of spirits and wine in sections 78 and 82, only an alcohol licensee or licensed user may import bulk alcohol.

Section 74 – Unauthorized export

This section specifies the restrictions imposed on exports of bulk alcohol. Bulk alcohol may only be exported by the alcohol licensee who is responsible for the alcohol or the licensed user who imported the alcohol.

Special Containers of Spirits

The concept of a marked special container is intended to accommodate the use by registered users of large containers of spirits (that is, greater than 25 litres but not more than 250 litres) that when marked will be treated as packaged spirits. Registered users are entitled to use packaged spirits on a non-duty-paid basis for scientific, medicinal or research purposes.

Section 75 – Marked container deemed packaged

An alcohol licensee may mark a special container of spirits to indicate that it is to be delivered to a registered user. The spirits are considered to have been packaged, other than for licensing purposes, when the container is marked.

Section 76 – Marking

Subject to section 78, only an alcohol licensee may mark a special container of spirits. A special container of spirits is deemed to be packaged at the time the container is marked. In order to retain the

non-duty-paid status of the spirits for use by registered users, the special container must be placed in an excise warehouse immediately after it has been marked.

Section 77 – Importation

In order to maintain the non-duty-paid status of spirits contained in marked special containers, only an excise warehouse licensee is authorized to import a marked special container of spirits.

Section 78 – Marking of imported container

Section 78 provides an exception to the rule under section 76 whereby only an alcohol licensee may mark a special container of spirits. A special container of spirits that is imported by an excise warehouse licensee and that is unmarked when imported must be marked in a sufferance warehouse by the excise warehouse licensee.

Section 79 – Imported container to be warehoused

When a marked special container of spirits has been released under the *Customs Act*, it is required to be placed immediately in the excise warehouse of the importing excise warehouse licensee.

Special Containers of Wine

In some provinces individuals can purchase and bottle wine at bottle-your-own premises. The wine that is bottled at these establishments is usually taken from large containers (that is, greater than 50 litres but not more than 2000 litres). In order to provide duty-paid wine for this purpose, the concept of a marked special container of wine is introduced. Wine in such a container is treated as packaged wine.

Section 80 – Marked container deemed packaged

An alcohol licensee is authorized to mark a special container of wine, in the form and manner prescribed, to indicate that it is to be delivered to a bottle-your-own premises. The marking of special containers amounts to packaging, other than for licensing purposes.

Section 81 – Marking

Subject to section 82, only an alcohol licensee is authorized to mark a special container of wine.

Section 82 – Marking of imported container

If a special container of wine is imported by a person other than an alcohol licensee or licensed user, and the container is not marked when it is imported, it must be placed in a sufferance warehouse to be marked by the owner or importer.

Section 83 – Delivery of imported container

When a marked special container of wine is released under the *Customs Act* the container is to be immediately delivered to a bottle-your-own premises unless it is imported by an excise warehouse licensee and immediately entered into the licensee's warehouse.

Packaged Alcohol

Duty is payable on alcohol at the time it is packaged unless it is placed in an excise warehouse immediately after packaging. Only excise warehouse licensees and certain other persons may have non-duty-paid packaged alcohol in their possession and non-duty-paid packaged alcohol may only be used under certain circumstances. Furthermore, a marked special container of wine, although duty-paid, may only be used at a bottle-your-own premises.

Section 84 – Information on container

Alcohol shall be packaged in containers that have printed on them prescribed information.

Section 85 – Prohibition – possession

This section specifies the persons who may possess packaged alcohol on a non-duty-paid basis and the circumstances under which they may possess the alcohol.

Section 86 – Storage

This section prohibits a ferment-on-premises registrant from storing packaged wine at the registrant's premises.

Section 87 – Restriction – licensed user

This section is similar to section 72. A licensed user may only use non-duty-paid packaged alcohol for any use other than in or for a beverage, return it to the supplying excise warehouse licensee, export it if it was imported by the licensed user, or destroy it in a manner approved by the Minister.

Section 88 – Restriction – registered user

A registered user may only use non-duty-paid packaged spirits for a purpose described in section 15 or for analysis, or return it to the supplying excise warehouse licensee or destroy it in a manner approved by the Minister.

Section 89 – Unauthorized removal – spirits

Only a registered user may remove spirits from a marked special container of spirits.

Section 90 – Unauthorized removal – wine

Only a purchaser at a bottle-your-own premises is authorized to remove wine from a marked special container. The one exception to this rule is where the container has been returned to the supplying alcohol licensee or excise warehouse licensee. In this case, the licensee may remove the wine for the purpose of destroying it in an approved manner.

Denatured Spirits and Specially Denatured Spirits

Denatured and specially denatured spirits are spirits mixed with prescribed denaturants that render the product non-potable and make the recovery of spirits uneconomical in the case of denatured spirits, and less economical in the case of specially denatured spirits. Because spirits can be recovered from specially denatured

spirits, the Act imposes restrictions on their possession, supply and use.

Section 91 – Prohibition – sale as beverage

Denatured and specially denatured spirits are prohibited from sale, supply or use for beverage purposes.

Section 92 – Recovery of spirits

Only an alcohol licensee may recover spirits from denatured and specially denatured spirits.

Section 93 – Unauthorized use of SDS

Only an SDS registrant may use specially denatured spirits.

Section 94 – Unauthorized possession of SDS

Specially denatured spirits that are produced by an alcohol licensee may be in the possession of an alcohol licensee, an SDS registrant or an alcohol registrant. Specially denatured spirits that are imported by an alcohol licensee may also be in the possession of a sufferance warehouse licensee. Specially denatured spirits that are imported by an SDS registrant, may be in the possession of the SDS registrant, an alcohol registrant or a sufferance warehouse licensee.

Section 95 – Unauthorized supply of SDS

Specially denatured spirits may only be supplied to an alcohol licensee, an SDS registrant or an alcohol registrant.

Section 96 – Restriction on alcohol registrant

An alcohol registrant may only possess specially denatured spirits for the purpose of storing and transporting them.

Section 97 – Unauthorized importing of SDS

Specially denatured spirits may only be imported by an alcohol licensee or SDS registrant.

Section 98 – Unauthorized exporting of SDS

In keeping with the restrictions on possession and use of specially denatured spirits, specially denatured spirits may only be exported by an alcohol licensee or the SDS registrant who imported the spirits.

Section 99 – Restriction on disposal

An SDS registrant is authorized to possess and use specially denatured spirits for non-beverage purposes. This section specifies that an SDS registrant may dispose of specially denatured spirits by returning them to the supplying alcohol licensee, exporting them if the SDS registrant was the importer or destroying them in a manner approved by the Minister.

Responsibility for Bulk Alcohol

The person who is responsible for bulk alcohol is liable for duty on the alcohol if the alcohol is taken for use or packaged. Sections 100 to 107 set out the rules for determining responsibility for bulk alcohol.

Section 100 – Responsibility

This section sets out the basic rules for determining the responsible person in respect of bulk alcohol. The responsible person at a particular time is:

- the alcohol licensee or licensed user who is the owner of the bulk alcohol at that time;
- the alcohol licensee who last owned the alcohol where the alcohol is not owned by either an alcohol licensee or licensed user; or
- the alcohol licensee who imported or produced the alcohol or the licensed user who imported the alcohol, where the alcohol has never been owned by an alcohol licensee or licensed user.

Section 101 – Return of alcohol purchased from unlicensed person

This section sets out a special rule concerning the transfer of responsibility in certain situations involving the return of bulk

alcohol. Where bulk alcohol that has been purchased by an alcohol licensee or licensed user is returned to the supplying alcohol licensee within 60 days and ownership reverts to the unlicensed vendor, responsibility for the bulk alcohol shifts back to the alcohol licensee who was responsible for the alcohol immediately prior to the sale.

Section 102 – Exception – provincial ownership

Where a provincial government or liquor authority that is an alcohol licensee or licensed user owns bulk alcohol for a purpose that is not related to the province's or liquor authority's alcohol licence or user's licence, responsibility for the bulk alcohol is to be determined in accordance with section 100 as if the alcohol were owned by an unlicensed person.

Section 103 – Alcohol imported by licensed user

A licensed user cannot dispose of bulk alcohol the licensed user imported other than pursuant to section 72 by exporting it or destroying it. If a licensed user imports bulk alcohol, this section makes the licensed user the responsible person at all times for the bulk alcohol.

Section 104 – Blended alcohol – joint and several responsibility

If bulk alcohol for which one person is responsible is blended with bulk alcohol for which another person is responsible, the two persons become jointly and severally responsible for the blended bulk alcohol.

Section 105 – Person not responsible

A person who is responsible for bulk alcohol ceases to be responsible for the bulk alcohol if the alcohol is

- taken for use and duty on the alcohol is paid;
- used in accordance with section 128 or subsection 129(1);
- denatured into denatured or specially denatured spirits;
- exported in accordance with the Act; or
- lost, subject to prescribed circumstances and conditions affecting lost spirits, and in the case of wine, if the loss is recorded in a manner authorized by the Minister.

Section 106 – Notification of change of ownership

Where bulk alcohol is purchased by an alcohol licensee or licensed user from an unlicensed person, the purchaser is required to obtain from the vendor the name and address of the alcohol licensee responsible for the bulk alcohol immediately before the sale and give notice of the sale to that alcohol licensee. This section does not apply to bulk alcohol that is purchased outside Canada for importation.

Section 107 – Removal of special container

Where an alcohol licensee has removed from the licensee's excise warehouse an unmarked special container of alcohol in accordance with section 139, the licensee is responsible for the alcohol in the container unless the alcohol is owned by another alcohol licensee or licensed user.

Imposition and Payment of Duty on Alcohol

Sections 108 to 125 deal with the imposition and payment of duty on spirits and wine. Duty is imposed on spirits at the time they come into existence. Duty on wine is imposed at the time of packaging, except where bulk wine is taken for use, in which case duty is imposed at the time the bulk wine is taken for use. Duty is not imposed on wine produced by an individual for personal use.

As a general rule, duty is payable on spirits and wine at the time of packaging unless, immediately after packaging, they are placed in an excise warehouse. Duty is payable when the packaged spirits or wine are removed from the excise warehouse for the duty-paid market.

Section 108 – Imposition – domestic spirits

This section is the general imposition of duty provision for spirits produced in Canada, including spirits recovered from wine, beer, denatured spirits and specially denatured spirits. The section establishes the fundamental principle that duty is imposed on spirits when the spirits come into existence.

In the case of imported spirits, duty, equivalent to the duty imposed under this section or section 109, is imposed by section 21.1 or 21.2 of the *Customs Tariff* at the time of importation. (Sections 21.1 and 21.2 are set out in Part 8 of this Act.)

Section 109 – Imposition – low alcoholic strength spirits

This section imposes a lower rate of duty on spirits that contain 7% or less absolute ethyl alcohol by volume at the time of packaging. The lower rate of duty is equal to the rate set out in subsection 1(7) of Part I of the Schedule to the current *Excise Act* for low alcoholic strength mixed beverages.

Section 110 – Duty payable when packaged

This section specifies that, subject to sections 112 and 113, the duty on bulk spirits is payable when the spirits are packaged unless immediately after packaging the spirits are entered into an excise warehouse. Duty is payable by the person responsible for the bulk spirits immediately before they were packaged. In the case of spirits, “packaged” as defined in section 2 means packaged in a container of 25 litres or less that is ordinarily sold to consumers without the spirits being repackaged, or packaged in a marked special container.

Section 111 – Duty payable when removed from warehouse

The duty on packaged spirits that were entered into an excise warehouse is payable at the time the packaged spirits are removed from the warehouse for entry into the duty-paid market. The licensee of the excise warehouse is liable to pay the duty.

Section 112 – Duty payable on bulk spirits taken for use

This section establishes an exception to the principle that duty on bulk spirits is payable at the time of packaging. If bulk spirits are taken for use before packaging, duty is payable at the time they are taken for use (see the definition of “take for use”). The person responsible for the spirits at the time they are taken for use is liable to pay the duty at that time.

Section 113 – Duty payable on unaccounted bulk spirits

Duty is payable on bulk spirits where the spirits cannot be accounted for as being in the possession of an alcohol licensee, a licensed user or an alcohol registrant. The duty is payable by the person responsible for the spirits at the time they cannot be accounted for.

Section 114 – Duty payable on packaged spirits taken for use

Duty is payable on non-duty-paid packaged spirits in the possession of an excise warehouse licensee or a licensed user that are taken for use (see the definition of “take for use”). The duty is payable by the licensee or user at the time the spirits are taken for use.

Section 115 – Duty payable on unaccounted packaged spirits

Duty is payable on non-duty-paid packaged spirits received by an excise warehouse licensee or a licensed user that cannot be accounted for as being in the warehouse of the excise warehouse licensee or the specified premises of the licensed user, or as having been removed, used or destroyed in accordance with the Act or lost in prescribed circumstances and under prescribed conditions. The duty is payable by the excise warehouse licensee or licensed user at the time the spirits cannot be accounted for.

Section 116 – Fortifying wine

This section authorizes alcohol licensees to use bulk spirits to fortify wine. The resulting product is considered to be wine as long as it does not exceed an alcoholic strength of 22.9% absolute ethyl alcohol by volume. In this case, the duty imposed on the spirits is not payable. If the indicated percentage is exceeded, the product is considered to be spirits produced at the time the product is fortified in excess of 22.9% absolute ethyl alcohol.

Section 117 – Duty not payable – DS and SDS

Spirits that are denatured into denatured spirits or specially denatured spirits are relieved of duty.

Section 118 – Imposition of special duty

This section imposes a special duty on imported spirits delivered to or imported by a licensed user. The special duty is equivalent to the current duty of 12 cents per litre of absolute ethyl alcohol provided for in section 2 of Part I of the Schedule to the current *Excise Act*. The special duty is payable by the responsible alcohol licensee or the excise warehouse licensee who delivers the spirits to the licensed user, or by the licensed user who imported the spirits. The special duty is payable at the time of delivery to a licensed user by an alcohol licensee, at the time of removal from an excise warehouse for delivery to a licensed user, or when the spirits are imported by a licensed user.

Section 119 – Imposition – bulk wine taken for use

Duty is imposed on bulk wine taken for use (see the definition of “take for use”) and is payable at that time by the person responsible for the wine.

Section 120 – Imposition – wine packaged in Canada

Except where bulk wine is taken for use, duty on wine is imposed when it is packaged in Canada. Duty is payable at the time of packaging by the person who was responsible for the wine immediately before packaging. However, payment of duty is deferred if the wine is entered into an excise warehouse immediately after packaging.

In the case of imported packaged wine, duty, equivalent to the duty imposed by this section, is imposed by section 21.2 of the *Customs Tariff*. (See Part 8 of this Act.)

Section 121 – Exception – wine produced for personal use

Duty is not imposed on wine produced by an individual for personal use if it is consumed or packaged by an individual. Personal use of a good by an individual, as defined in section 2, means the personal consumption of the good by the individual or others at the expense of the individual. It does not include any commercial use of the good.

Section 122 – Duty payable on removal from warehouse

The duty on packaged wine entered into an excise warehouse is payable at the time the wine is removed from the excise warehouse for entry into the duty-paid market. Duty is payable by the licensee of the excise warehouse.

Section 123 – Duty payable on packaged wine taken for use

Duty is payable on non-duty-paid packaged wine in the possession of an excise warehouse licensee or licensed user that is taken for use (see the definition of “take for use”). The duty is payable by the licensee or user when the wine is taken for use.

Section 124 – Duty payable on unaccounted packaged wine

Duty is payable on non-duty-paid packaged wine that has been received by an excise warehouse licensee or licensed user that cannot be accounted for as being in the excise warehouse of the licensee or the specified premises of the licensed user, or as having been removed, used or destroyed in accordance with the Act or lost in prescribed circumstances and under prescribed conditions. The duty is payable by the excise warehouse licensee or licensed user at the time the wine cannot be accounted for.

Liability of Excise Warehouse Licensees and Licensed Users

Sections 125 to 127 deal with the assignment of liability for duty on non-duty-paid packaged alcohol that enters an excise warehouse or the premises of a licensed user.

Section 125 – Non-duty-paid packaged alcohol

The payment of duty on packaged alcohol may be deferred if the alcohol is entered into an excise warehouse immediately after packaging. This section specifies that the licensee of the excise warehouse into which the packaged alcohol is entered becomes liable for the duty on the alcohol at the time the alcohol is entered into the warehouse.

Section 126 – Imported packaged alcohol

This section provides that where imported packaged alcohol is released under the *Customs Act* without the payment of duty imposed by section 21.2 of the *Customs Tariff*, the importing excise warehouse licensee or licensed user to whom the alcohol is released becomes liable for the duty on the alcohol.

Section 127 – Transfer between warehouse licensees

The purpose of this section is to provide for the transfer of liability for duty when non-duty-paid packaged alcohol is transferred from the excise warehouse of one licensee to the excise warehouse of another licensee. The excise warehouse licensee who receives the transferred alcohol becomes liable for the duty on the alcohol at the time the alcohol is entered into the receiving licensee's warehouse, and at the same time the licensee who transferred the alcohol is no longer liable for duty. Similar rules apply when packaged alcohol is transferred from an excise warehouse licensee to a licensed user or from a licensed user to an excise warehouse licensee.

Non-dutiable Uses and Removals of Alcohol

The authorized non-dutiable uses of bulk and packaged alcohol are specified in sections 128 to 130.

Section 128 – Non-dutiable uses – bulk and packaged alcohol

This section specifies the circumstances under which duty is not payable on bulk and non-duty-paid packaged alcohol.

Duty is not payable on bulk alcohol, if the alcohol is

- taken for analysis or destroyed by an alcohol licensee or a licensed user in a manner approved by the Minister;
- used by a licensed user in an approved formula; or
- used by a licensed user in a process in which the ethyl alcohol is destroyed to the extent approved by the Minister.

Duty is not payable on packaged alcohol, if the alcohol is

- taken for analysis or destroyed by an excise warehouse licensee or a licensed user in an approved manner;
- used by a licensed user in an approved formula; or
- used by a licensed user in a process in which the ethyl alcohol is destroyed to the extent approved by the Minister.

Duty is also not payable where bulk or non-duty-paid packaged alcohol is taken for analysis or destroyed by the Minister.

Section 129 – Duty not payable – vinegar

Duty is not payable on spirits or wine used by a licensed user to manufacture vinegar provided that each litre of absolute ethyl alcohol used renders 0.5 kg or more of acetic acid.

If less than 0.5 kg of acetic acid is produced from every litre of absolute ethyl alcohol used, the licensed user is deemed to have taken for use a volume of spirits or wine that is equivalent to the volume of absolute ethyl alcohol determined by subtracting two times the number of kilograms of acetic acid produced from the number of litres of absolute ethyl alcohol used. The duty on the spirits or wine is payable when the vinegar is produced. In the case of vinegar produced from bulk alcohol, the duty is payable by the person responsible for the bulk alcohol. In the case of vinegar produced from packaged alcohol, the duty is payable by the licensed user who produced the vinegar.

Section 130 – Non-dutiable removals – packaged alcohol

This section specifies the circumstances under which non-duty-paid packaged alcohol is relieved from duty at the time of removal from an excise warehouse. The circumstances include removal of packaged alcohol, other than a marked special container of alcohol, from an excise warehouse for

- delivery to an accredited representative, duty free shop, a registered user or as ships' stores, or
- export by the licensee of the excise warehouse.

Duty is not payable on a marked special container of spirits removed from an excise warehouse for

- delivery to a registered user, or
- export by the excise warehouse licensee, where the container was imported.

As well, duty is not payable on the removal from an excise warehouse of an imported marked special container of wine for export by the excise warehouse licensee.

Determining Volume of Alcohol

For the purpose of calculating duty, the volume of alcohol and absolute ethyl alcohol is required to be determined in the prescribed manner with approved instruments, unless special circumstances apply.

Section 131 – Volume of alcohol

This section specifies that the volume of alcohol and its absolute ethyl alcohol content are to be ascertained in the prescribed manner by means of an instrument, or a class, type or design of instrument, approved by the Minister. The Minister is authorized to re-examine approved instruments and revoke an approval.

Section 132 – Special circumstances

If the Minister concludes that determining the volume or absolute ethyl alcohol content of alcohol in accordance with section 131 is difficult due to particular conditions or circumstances, the determination may be made in another manner approved by the Minister.

Excise Warehouses

Excise warehouses may be used to defer the payment of duty imposed by this Act or by new sections 21.1 and 21.2 of the *Customs Tariff*. Duty is payable at the time packaged alcohol is removed from an excise warehouse for the duty-paid market. Under certain circumstances packaged alcohol may be removed from a warehouse without the payment of duty.

Section 133 – Restriction – entering into warehouse

Non-duty-paid packaged alcohol can only be entered into an excise warehouse in accordance with the Act and regulations.

Section 134 – Import by warehouse licensee or licensed user

Duty on alcohol packaged in Canada is not payable if immediately after packaging it is entered into an excise warehouse. Packaged alcohol may be removed from an excise warehouse, without the payment of duty, for delivery to a licensed user. This section establishes a similar arrangement for imported packaged alcohol. Imported packaged alcohol that is released under the *Customs Act* without the payment of duty in accordance with new section 21.2 of the *Customs Tariff* must immediately be entered into the excise warehouse of the excise warehouse licensee or the specified premises of the licensed user who imported the alcohol.

Section 135 – Restriction on removal

Packaged alcohol may be entered into an excise warehouse without payment of duty. This section specifies the restrictions on the removal of packaged alcohol from an excise warehouse. Non-duty-paid packaged alcohol, other than a marked special container of alcohol, may be removed from an excise warehouse for

- entry into the duty-paid market,
- delivery to another excise warehouse, an accredited representative, a duty free shop, a licensed user, a registered user, or as ships' stores, or
- export.

A non-duty-paid marked special container of wine may be removed from an excise warehouse for

- delivery to another excise warehouse, or
- entry into the duty-paid market for delivery to a bottle-your-own premises.

A non-duty-paid marked special container of spirits may be removed from an excise warehouse for delivery to

- another excise warehouse, or
- a registered user.

An imported marked special container of alcohol may also be removed from an excise warehouse for export.

Section 136 – Return of duty-paid alcohol

This section allows for the return, under prescribed conditions, of duty-paid packaged alcohol to the non-duty-paid inventory of the excise warehouse from which it was removed.

Section 137 – Return of non-duty-paid alcohol

Non-duty-paid packaged alcohol removed from an excise warehouse in the circumstances described in section 130 may, under prescribed conditions, be returned to the non-duty-paid inventory of an excise warehouse.

Section 138 – Supplying packaged alcohol to retail store

This provision restricts the volume of packaged alcohol that may be supplied to a retail store from a single premises of an excise warehouse licensee to a maximum of 60% of the total volume of packaged alcohol supplied from the premises to retail stores in the year.

The limitation does not apply if the retail store is a store of an alcohol licensee who supplied the alcohol from the licensee's excise warehouse, provided

- the store is located where the supplying alcohol licensee produces or packages alcohol, and
- at least 90% of the alcohol supplied from the excise warehouse during the year was packaged by the alcohol licensee, or packaged on behalf of the alcohol licensee, and the alcohol licensee was the responsible person for the alcohol at the time of packaging.

Section 139 – Removal of special container

An alcohol licensee who has marked a special container of alcohol may return it to bulk alcohol status by removing the marking on the container. At the time the marking is removed, the unmarked special container must be removed from the excise warehouse of the alcohol licensee.

PART 5

GENERAL PROVISIONS CONCERNING DUTY

Fiscal Month

As a general rule, the fiscal month of a licensee or other person required to pay duty is the person's fiscal month for GST purposes.

Section 140 – Licensee

A licensee who is required to file a return under the Act is required to select a fiscal month in accordance with the rules for determining fiscal months for GST purposes (under subsection 243(2) of the *Excise Tax Act*) and to notify the Minister. Where the licensee fails to select a fiscal month, the licensee's fiscal month is the calendar month.

A person, other than a licensee, who is required to pay duty and file a return and who has selected a fiscal month for GST purposes is deemed to have selected that month for purposes of this Act. If the person has not selected a fiscal month for GST purposes, the person's fiscal month is the calendar month.

Returns and Payment of Duty and Other Amounts

The provisions dealing with returns and the payment of duty are similar to the GST provisions relating to returns and remittances.

Section 141 – Filing by licensee

This section requires persons who are licensed under the Act to file monthly returns and pay duty. The return is required to be filed, and the duty paid, by the end of the month following the person's fiscal month in which the duty became payable.

Section 142 – Filing by other person

This section deals with the filing of returns and the payment of duty by persons who are not licensed under the Act. Persons who are not licensed under the Act but who are liable to pay duty are required to file a return and pay the duty owing by the end of the month

following the person's fiscal month in which the duty became payable.

Section 143 – Set-off of refunds

If a person reports an amount payable by the person in a return and, at the same time, the person claims a refund in the return or other return or application filed with the return, the lesser of the amount payable and the amount of the refund may be offset against the other amount. (Subsection 228(6), *Excise Tax Act*)

Section 144 – Large payments

Every person required to pay \$50,000 or more in a single payment to the Receiver General is required to remit the amount at a financial institution. (Subsection 278(3), *Excise Tax Act*)

Section 145 – Authority for separate returns

If a licensee carries on business by way of separate branches or divisions, the licensee may seek permission from the Minister to file separate returns for the licensee's separate branches or divisions. To qualify, a branch or division must be separate in terms of its location or operations and it must have separate books and records as well as a separate accounting system. The Minister may revoke an authorization where the licensee no longer meets the requirements for authorization or the authorization is no longer required. (Section 239, *Excise Tax Act*)

Section 146 – Small amounts owing

If the total amount payable by a person is \$2.00 or less, it is deemed to be nil. Similarly, if the total of the amount payable by the Minister is \$2.00 or less, it is deemed to be nil, except if it can be used by way of set-off to reduce an amount payable by a person.

Section 147 – Meaning of “electronic filing”

A person required to file returns under the Act may apply to the Minister to use electronic media for filing the returns. If the Minister is satisfied that the applicant meets the criteria for electronic filing, authorization may be granted. A return filed electronically is only

deemed to be a return when the Minister acknowledges acceptance of it. The Minister may revoke the authorization. (Section 278.1, *Excise Tax Act*)

Section 148 – Execution of returns, etc.

This section specifies how a return, certificate or other document filed (other than by way of electronic filing) is to be signed on behalf of a corporation or other body. Senior officers named in the section are deemed to be duly authorized signing officers. (Section 279, *Excise Tax Act*)

Section 149 – Interest on amounts not paid when required

This section imposes interest on deficient or late payments under the Act at the prescribed rate. Interest will be calculated from the time the amount was required to be paid until the day the amount is paid. (Subsections 280(1) and (4.1), *Excise Tax Act*)

Section 150 – Extension of time

The Minister may extend the time for filing a return or providing information. Where an extension has been granted, any duty payable is to be paid within the extended time. However, interest accrues as if the time had not been extended. (Section 281, *Excise Tax Act*)

Section 151 – Waiving or reducing interest

The Minister may waive or reduce interest payable under the Act. This section provides the Minister with the discretionary authority to waive interest where, in the sole discretion of the Minister there are extraordinary circumstances beyond a person's control and the person has been prevented from complying with the requirement to pay duty or another amount. (Subsection 281.1(1), *Excise Tax Act*)

Section 152 – Demand for return

The Minister may demand that a person file a return for any period. (Section 282, *Excise Tax Act*)

Refunds

Under certain conditions, licensees and other persons may apply for a refund of the duty paid on alcohol and tobacco products.

Refund applications are generally required to be made within 2 years of the event that gave rise to the refund entitlement.

Section 153 – Statutory recovery rights

Duty, interest or another amount paid under the Act is not refundable except to the extent that the Act, the *Customs Act*, the *Customs Tariff* or the *Financial Administration Act* provides. (Section 312, *Excise Tax Act*)

Section 154 – Applications for refunds

A person applying for a refund under the Act must make an application in the prescribed form and manner. Only one application may be made for a particular refund. (Section 262, *Excise Tax Act*)

Section 155 – Payment if error

A person who pays an amount under the Act that is later found not to be payable is entitled to a refund of the amount, provided the person applies for the refund within 2 years of the day the amount was paid. The refund is not, however, payable to the person where the amount has been included in an assessment under section 167. (Section 261, *Excise Tax Act*)

Section 156 – Restriction on refunds, etc.

This section provides that a person is not entitled to a refund or payment of an amount under the Act to the extent that the person has been paid the refund or amount under this or any other Act of Parliament, or has applied for the refund or amount under any other Act of Parliament. (Section 263, *Excise Tax Act*)

Section 157 – Restriction re trustees

A refund or other payment that a person was entitled to prior to the appointment of a trustee in bankruptcy for the person shall not be paid unless all returns for the fiscal months that ended before the

appointment of the trustee have been filed and all outstanding payments for those fiscal months have been paid. (Section 263.1, *Excise Tax Act*)

Section 158 – Overpayment of refunds, etc.

This section provides that if a person receives a refund to which the person was not entitled or an overpayment of a refund, the person shall pay the amount of the refund or overpayment to the Receiver General. (Section 264, *Excise Tax Act*)

Section 159 – No refund on exported tobacco products or alcohol

The duty paid on alcohol or tobacco products entered into the duty-paid market shall not be refunded if the alcohol or tobacco products are subsequently exported.

Section 160 – Re-worked or destroyed tobacco products

A tobacco licensee is entitled to a refund of the duty paid on tobacco products re-worked or destroyed by the tobacco licensee in accordance with section 40, provided the licensee applies for the refund within 2 years of the day the tobacco was re-worked or destroyed. (Section 207, *Excise Act*)

Section 161 – Refund of duty – foreign duties paid, etc.

The special duty imposed by section 50 on tobacco products exported by the tobacco licensee who manufactured the products may be refunded to the licensee if evidence is provided to the Minister that the duties and taxes charged on the products by the government of the importing country have been paid, or that the products were sold to a foreign duty free shop for sale in that shop. The licensee has to apply for the refund within 2 years of the day the tobacco products were exported. (Section 68.161, *Excise Tax Act*)

Section 162 – Refund to P.E.I. wholesaler

A “licensed wholesale vendor” (as defined in section 57) who sells Nova Scotia marked cigarettes or tobacco sticks to a “licensed retail vendor” (as defined in section 57) or to a consumer in Prince Edward Island is entitled to a refund of the duty on the tobacco products equal to the difference in the rate of duty applicable to Nova Scotia marked cigarettes and tobacco sticks and the rate of duty applicable to those products when sold in Prince Edward Island. The licensed wholesale vendor is required to apply for the refund within 2 years of the day the tobacco products were sold. (Subsections 68.169(3.23) to (5), *Excise Tax Act*.)

Section 163 – Payment if bad debt

A tobacco licensee who has paid *ad valorem* duty under section 42 in respect of an arm's length sale of cigars is entitled to claim bad debt relief in respect of the sale if the bad debt is written off in the licensee's books and if the licensee applies for the relief in the 2 years after the licensee's fiscal month during which the bad debt was written off. (Section 68.21, *Excise Tax Act*)

Section 164 – Refund – bulk or packaged imported spirits

If a licensed user returns imported bulk spirits to the alcohol licensee who supplied the spirits to the user or returns packaged imported spirits to the excise warehouse licensee who supplied them, the supplying alcohol licensee or excise warehouse licensee is entitled to a refund of the special duty imposed by section 118 on the imported spirits if the licensee applies for the refund within 2 years after the day the spirits were returned.

Section 165 – Refund – alcohol returned to warehouse

The excise warehouse licensee who supplied packaged alcohol for the duty-paid market is entitled to a refund of the duty paid on the alcohol if the alcohol is returned to the licensee's warehouse in accordance with section 136 and the licensee applies for the refund within 2 years after the day of the return of the alcohol.

Section 166 – Refund – wine in special container

Where a marked special container of wine is returned to the alcohol licensee or excise warehouse licensee who supplied the container, the licensee who paid the duty is entitled to a refund of the duty on the wine remaining in the marked special container, if the licensee destroys the wine in the manner approved by the Minister and the licensee who paid the duty applies for the refund within 2 years after the day the container was returned.

Assessments

The assessment provisions in the Act are similar to those in Part IX of the *Excise Tax Act*.

Section 167 – Assessments

This section authorizes the Minister to assess or reassess persons for their liabilities under the Act. When assessing a person, the Minister may take into account any overpayment made by the person or refund owing to the person. (Section 296, *Excise Tax Act*)

Section 168 – Assessment of refund

Where a person applies for a refund, the Minister shall consider the application and assess the amount of the refund owing. To receive a refund a person must have filed all returns required for the fiscal month of the refund application and all preceding fiscal months. Interest shall be paid at the prescribed rate on refunds for the period beginning 30 days after the refund application is filed with the Minister and ending on the day the refund is paid. (Subsection 229(2) and section 297, *Excise Tax Act*)

Section 169 – Assessment of overpayment

Despite a prior assessment, the Minister may assess, reassess, or make an additional assessment of an amount payable by a person under section 158 as a result of the payment of a refund to which the person was not entitled or an overpayment of a refund. (Subsection 297(2.1), *Excise Tax Act*)

Section 170 – No assessment for penalty

This section provides that no assessment shall be made for administrative penalties imposed under section 232 of the Act. A person liable to pay an administrative penalty may request a decision of the Minister concerning the penalty in accordance with section 250.

Section 171 – Limitation period for assessments

This section sets out the limitation periods for assessing duty, interest or other amounts payable under the Act. Generally, an assessment of the duty payable for a fiscal month shall not be made more than 4 years after the later of the day on which the return was required to be filed under section 141 or 142 and the day the return was filed. (Section 298, *Excise Tax Act*)

Section 172 – Minister not bound

The Minister is not bound by any return, application or information supplied by a person and an assessment may be made even if no return has been filed. A person's liabilities under the Act are not affected by an incorrect or incomplete assessment or the absence of an assessment. An assessment is deemed to be valid and binding despite any error, defect, or omission in it. (Section 299, *Excise Tax Act*)

Section 173 – Notice of assessment

This section requires the Minister to provide a notice of assessment to any person who has been assessed. A notice of assessment may include assessments of any number or combination of fiscal months, refunds or amounts payable under the Act. (Section 300, *Excise Tax Act*)

Objections to Assessment

Section 174 – Objection to assessment

A person who disagrees with an assessment may file a notice of objection with the Minister within 90 days from the date of mailing the notice of assessment. The Minister is required to reconsider the

assessment and either vacate or confirm the assessment or make a reassessment. However, the Minister may confirm the assessment without reconsidering it if a person who wishes to appeal directly to the Tax Court requests the Minister to do so. (Section 301, *Excise Tax Act*)

Appeal

A taxpayer may appeal the Minister's decision on an objection relating to an assessment to the Tax Court of Canada. Appeals can be instituted under the general procedure or, if the matter at issue involves not more than \$25,000, the informal procedure. The Tax Court may either dismiss an appeal or allow it and cancel the assessment or refer the assessment back to the Minister for reconsideration. Any decision of the Tax Court may be appealed to the Federal Court of Canada.

Section 175 – Appeal to Tax Court

Where a person has objected to an assessment and the Minister has made a reassessment or an additional assessment, the person may appeal the reassessment or additional assessment to the Tax Court. The appeal must be commenced within 90 days of the day the notice of reassessment or additional assessment was sent to the person. (Section 302, *Excise Tax Act*)

Sections 176 – Extension of time by Minister

If a person does not file a notice of objection under section 174 within the time limited under the Act but wishes to do so, they may seek an extension of the time for filing. The application must be made to the Minister within one year of the expiration of the time for objecting and as soon as circumstances permit. The person must demonstrate they were unable to act within the time otherwise limited for objecting or that they had a *bona fide* intention to object to the assessment within that time. They must also give the reasons why it would be just and equitable to grant the application. (Section 303, *Excise Tax Act*)

Section 177 – Extension of time by Tax Court

If the Minister refuses an application for an extension of time, or does not make a decision within 90 days of receiving the application, a person may apply to the Tax Court for an extension of time.

Where applicable, the application is to be made within 30 days from the day the Minister's decision under section 176 is mailed to the person. The applicant must meet the same conditions as in the case of an application to the Minister for an extension of time.

(Section 304, *Excise Tax Act*)

Section 178 – Extension of time to appeal

If an appeal to the Tax Court under section 179 is not commenced within the allotted time, an application may be made to the Court seeking an extension of the time for appealing. The application must be made within one year following the time allowed for appealing and must contain information to justify why an extension should be granted. The applicant must also demonstrate that there are reasonable grounds for appealing. (Section 305, *Excise Tax Act*)

Section 179 – Appeal to Tax Court

A person may appeal to the Tax Court where, in response to a notice of objection, the Minister has confirmed the assessment or made a reassessment, or, where the Minister has not made a decision on the notice of objection, within 180 days of the notice being filed. Where applicable, the appeal is to be made within 90 days of notice of the Minister's decision confirming the assessment or making a reassessment being sent to the person. (Section 306, *Excise Tax Act*)

Section 180 – Limitation on appeals to the Tax Court

An appeal to the Tax Court may only pertain to an issue specified in the notice of objection to an assessment as required by section 174 and the relief sought with respect to an issue cannot be revised.

These restrictions do not, however, apply if the issue was raised for the first time in the Minister's reconsideration of the assessment.

(Section 306.1, *Excise Tax Act*)

Section 181 – Institution of appeals

Appeals to the Tax Court are to be instituted in the manner specified in the *Tax Court of Canada Act* and the related rules. Appeals to the Tax Court can be instituted under the general procedure and, if the matter at issue involves not more than \$25,000, under the informal procedure. (Section 307, *Excise Tax Act*)

Section 182 – Notice to Deputy Minister

Where an appeal has been commenced under the informal procedure of the Tax Court of Canada, the Court is required to notify the Deputy Minister of the appeal. The Deputy Minister is then required to forward to the Court and the appellant copies of all returns, notices of assessment, notices of objection and all other relevant material. These copies form part of the record for the appeal. (Section 308, *Excise Tax Act*)

Section 183 – Disposition of appeal

The Tax Court may either dismiss an appeal or allow the appeal and either vacate the assessment or refer the assessment back to the Minister for reconsideration and reassessment. (Section 309 of the *Excise Tax Act*)

Section 184 – References to Tax Court

This section allows the Minister and another person to agree to have a question relating to an assessment or proposed assessment determined by the Tax Court. The time during which a question is being determined is excluded from the limitation periods for issuing assessments and filing notices of objection and appeal. (Section 310, *Excise Tax Act*)

Section 185 – Reference of common questions to Tax Court

The Minister may apply to have a question concerning a transaction or set of transactions common to assessments or proposed assessments of two or more persons determined by the Tax Court. The determination of the Court is binding on all parties. It may be appealed to the Federal Court. The time during which a question is being determined is excluded from the limitation periods for issuing

assessments and filing notices of objection and appeal. (Section 311, *Excise Tax Act*)

Records and Information

Sections 186 to 192 set out the requirements under the Act relating to the keeping of records and the provision of records and information for any purpose relating to the administration and enforcement of the Act.

Section 186 – Keeping records – general

Every licensee, registrant, person required to file a return and every person applying for a refund is required to keep records sufficient to enable a determination to be made of their liabilities and obligations and any entitlement to a refund. Persons transporting non-duty-paid packaged alcohol or tobacco products that are not stamped with a tobacco stamp are also required to keep records. The basic period for retaining records is 6 years after the end of the year to which they relate. (Subsections 286(1) to (3), *Excise Tax Act*)

Section 187 – Objection or appeal

Where there is an objection, appeal or reference, all records relevant to the proceeding are to be kept until the proceeding and any subsequent appeals are finalized. A person required to keep records may be required, by way of a demand served by the Minister, to retain the records for any period specified in the demand. A person may be able to dispose of them earlier than required if the Minister gives written permission for their disposal. (Subsections 286(4) to (6), *Excise Tax Act*)

Section 188 – Provincial sales records

This section requires persons authorized to sell manufactured tobacco to retail vendors in Ontario, Quebec, Nova Scotia, New Brunswick or Prince Edward Island (the five provinces where tobacco products are subject to reduced rates of duty) to make their records available to the Minister. (Section 98.1, *Excise Tax Act*)

Section 189 – Requirement to provide records or information

The Minister may, by notice, require a person to provide information or records for any purpose relating to the administration or enforcement of the Act. However, court authorization is to be obtained, *ex parte*, if the information or records sought pertain to one or more unnamed persons. In granting the authorization, the judge may impose any conditions the judge considers appropriate. Where court authorization has been granted, the person directed to provide information or records may have the authorization reviewed in court to determine if the statutory requirements for granting the authorization have been satisfied. (Section 289, *Excise Tax Act*)

Section 190 – Requirement to provide foreign-based information

The Minister may, by notice, require a person resident in Canada or a non-resident carrying on business in Canada to produce information or records located outside of Canada relevant to the administration or enforcement of the Act. A recipient of a notice may have the notice reviewed by a judge to determine whether the requirement to disclose is unreasonable. A person who fails to comply with a notice will be prohibited from introducing any information covered by the notice as evidence in any civil proceeding under the Act. (Section 292, *Excise Tax Act*)

Section 191 – Solicitor-client privilege

A lawyer who is prosecuted for failure to provide information or a record under section 189 may claim that the information or record is subject to solicitor-client privilege in respect of a named client. A record in the possession of a lawyer is not to be seized or examined before the lawyer has had a reasonable opportunity to make a claim of solicitor-client privilege. The Minister may contact the client to see if the client wishes to waive the privilege. The question of solicitor-client privilege is to be determined in a summary way by a judge, *in camera*, and if necessary the judge may examine the record. (Section 293, *Excise Tax Act*)

Section 192 – Provision of information

This section provides for the confidentiality of information obtained by the Minister in the administration or enforcement of the Act that

reveals, directly or indirectly, the identity of a person. This information cannot be used or communicated unless specifically authorized by one or more of the exceptions contained in the section.

An official shall not be required to give or produce evidence concerning confidential information in any legal proceeding, except for proceedings concerning the administration or enforcement of the Act, criminal proceedings and certain other specified proceedings (subsections (3) and (4)). An order or direction made in connection with the production of confidential information in any legal proceedings may be appealed by the Minister or the person against whom the order or direction is made, and the order or direction is suspended pending the determination of the appeal (subsections (9) to (11)).

Confidential information may be disclosed where there is imminent danger of death or physical injury to a person (subsection (5)). Confidential information may also be disclosed to a person for purposes of the administration or enforcement of the Act, the federal or provincial formulation or evaluation of fiscal policy and various other specified federal or provincial government operations (subsection (6)). Measures may be taken to maintain the security of confidential information used in legal proceedings dealing with the supervision, evaluation or discipline of an authorized person (subsection (7)). Confidential information may be released to the person to whom it relates and to other persons with that person's consent (subsection (8)). (Section 295, *Excise Tax Act*)

Bankruptcies

Certain obligations are imposed under section 193 on trustees in bankruptcy who are appointed to manage the estate of a bankrupt person and on receivers who are appointed to manage or wind up a business or property of a person.

Section 193 – Bankruptcies

A trustee in bankruptcy is liable for the payment of all amounts that become payable by a person after the day the trustee is appointed to the extent that there is sufficient property of the person to satisfy the liability. A licence or registration to which the bankruptcy relates continues in relation to the activities of the bankrupt to which the

bankruptcy applies. The trustee is required to file returns subsequent to the bankruptcy as well as any returns that were not filed prior to the bankruptcy.

A receiver appointed to manage or wind up a business or property of a person or care for the assets of a person is jointly and severally liable with the person in receivership for payment of amounts owing under the Act that arose before or after the appointment of the receiver. However, the receiver is liable for the payment of amounts payable prior to the receiver's appointment only to the extent of the property of the person under the management of the receiver after the payment of specified claims. The receiver is required to file returns relating to the receivership from the beginning of the receivership and any relevant returns that were not filed before that time.

A receiver or representative is not entitled to distribute property of a person under the receiver or representative's control until they have received a certificate from the Minister. The certificate certifies that all amounts payable or expected to become payable under the Act by the person or the receiver or representative for the current and prior fiscal periods have been paid or that security has been provided. If a distribution is made without a certificate being obtained, the receiver or representative is personally liable for the payment of any amount payable or expected to become payable under the Act to the extent of the value of the property distributed. (Subsections 265(1), 266(2) and 270(2) to (4), *Excise Tax Act*)

PART 6

ENFORCEMENT

Offences and Punishment

Sections 194 to 210 contain offence provisions that impose criminal penalties for serious breaches of the Act relating to alcohol and tobacco products. A person charged with a criminal offence must be prosecuted in court and, if convicted, may face a fine or imprisonment or both.

Section 194 – Unlawful manufacturing or stamping

Every person who, without a tobacco licence, manufactures a tobacco product or provides tobacco manufacturing equipment for use in the person's place of business contrary to section 24, or packages or stamps a tobacco product or raw leaf tobacco contrary to section 26 is guilty of an offence. In the case of an indictable offence, there may be imposed a fine of between \$10,000 and \$1,000,000, imprisonment for a term not exceeding 5 years, or both. In the case of a summary conviction proceeding, there may be imposed a fine of not less than \$1,000 and not more than \$100,000, imprisonment for a term not exceeding 2 years, or both. Imprisonment may also be imposed in default of payment of the fine.

Section 195 – Punishment – section 29

This section provides that the disposal, sale, offering for sale, purchase or possession of raw leaf tobacco contrary to section 29 constitutes an offence. A person found guilty of the offence is liable to a fine determined under subsections 195(2) and (3), or both the fine and imprisonment. Imprisonment may also be imposed in default of payment of the fine.

Section 196 – Punishment – section 31

This section makes it an offence for a person to possess, offer to sell or sell, other than in accordance with section 31, tobacco products not stamped with a tobacco stamp. A person found guilty of selling, offering to sell or possessing contraband tobacco products is liable to a fine determined under subsections 196(2) and (3), or both the fine

and imprisonment. Imprisonment may also be imposed in default of payment of the fine. (Section 240, *Excise Act*)

Section 197 – Offence of diverting – tobacco marked for sale in Ontario

Every person who sells or offers to sell manufactured tobacco marked for sale in Ontario to a consumer located in another province is guilty of an offence. A person found guilty of the offence is liable to a fine of not less than \$1,000 and not more than the greater of \$1,000 and 300% of the amount by which the full rate of duty exceeds the rate of duty applicable to the Ontario marked manufactured tobacco. (Section 97.1, *Excise Tax Act*)

Section 198 – Offence of diverting tobacco marked for sale in Quebec or N.B.

Every person is guilty of an offence if the person sells or offers to sell cigarettes or tobacco sticks marked for sale in Quebec or New Brunswick to a consumer who is not located in that province. A person found guilty of the offence is liable to a fine of not less than \$1,000 and not more than the greater of \$1,000 and 300% of the amount by which the full rate of duty exceeds the rate of duty applicable to the Quebec or New Brunswick marked cigarettes or tobacco sticks. (Section 97.2, *Excise Tax Act*)

Section 199 – Offence of diverting cigarettes marked for sale in N.S.

This section provides that every person who sells or offers to sell cigarettes marked for sale in Nova Scotia to a consumer in another province, other than Prince Edward Island, is guilty of an offence. A person found guilty of the offence is liable to a fine of not less than \$1,000 and not more than the greater of \$1,000 and 300% of the amount by which the full rate of duty exceeds the rate of duty applicable to the Nova Scotia marked cigarettes. (Section 97.3, *Excise Tax Act*)

Section 200 – Offence of unauthorized sale of tobacco intended for Indian reserve

Everyone who sells or offers to sell black stock manufactured tobacco, in respect of which paragraph 1(a)(ii), 2(a)(ii) or 3(a)(ii) of Schedule 1 to the Act applies, otherwise than to a “supplier” or an “on-reserve retailer” (as defined in section 60) or to an Indian consumer in Ontario is guilty of an offence. A person found guilty of the offence is liable to a fine of not less than \$1,000 and not more than the greater of \$1,000 and 300% of the amount by which the full rate of duty exceeds the rate of duty applicable to the black stock manufactured tobacco. (Section 97.4, *Excise Tax Act*)

Section 201 – Offence of unauthorized sale of cigarettes intended for Indian reserve

Every person who sells or offers to sell black stock cigarettes, in respect of which paragraph 1(c)(ii) of Schedule 1 to the Act applies, other than to a “designated wholesale vendor” or a “designated retail vendor” (as defined in section 61) or to an Indian consumer on a reserve in Nova Scotia is guilty of an offence. A person found guilty of the offence is liable to a fine of not less than \$1,000 and not more than the greater of \$1,000 and 300% of the amount by which the full rate of duty exceeds the rate of duty applicable to the black stock cigarettes. (Section 97.5, *Excise Tax Act*)

Section 202 – Punishment for certain alcohol offences

The following activities constitute offences under the Act:

- the sale of wine produced or packaged for personal use (section 64);
- the unauthorized use or disposal of bulk alcohol by an alcohol registrant (section 71);
- the unauthorized use or disposal of bulk alcohol by a licensed user (section 72);
- the unauthorized marking of a special container of spirits (subsection 76(1)) or wine (section 81);
- the unauthorized recovery of spirits from denatured spirits or specially denatured spirits (section 92); and
- the unauthorized use of specially denatured spirits (section 93).

A person convicted of an offence under the section is liable to a fine determined in accordance with subsections 202(2) and (3), or both the fine and imprisonment. Imprisonment may also be imposed in default of payment of the fine.

Section 203 – Punishment for more serious alcohol offences

The following activities constitute offences under the Act:

- producing, packaging or denaturing spirits, or producing or packaging wine without an alcohol licence (section 63);
- the unauthorized ownership (section 68) or possession of bulk alcohol (section 69);
- the unauthorized supply of bulk alcohol (section 70);
- the unauthorized importation of bulk alcohol (section 73); and
- the unauthorized possession of non-duty-paid packaged alcohol (section 85).

A person convicted of an offence under the section is liable to a fine determined in accordance with subsections 203(2) and (3), or both the fine and imprisonment. Imprisonment may also be imposed in default of payment of the fine.

Section 204 – Destroying records and making false entries

This section provides that a person is guilty of an offence if the person has

- made false or deceptive statements in a return or other record;
- sought to evade paying duty, interest or another amount payable under the Act, or sought to obtain an improper refund, by destroying or altering records, or making a false or deceptive entry or omission in a record;
- wilfully evaded compliance with the Act or payment of duty, interest or other amount;
- wilfully sought or obtained a refund to which the person is not entitled; or
- conspired with another to commit an offence listed in the first three points.

A person found guilty on summary conviction is liable to a fine determined under subsection 204(1). A person found guilty of an

indictable offence is liable to a fine determined under subsection 204(2) or to the fine and imprisonment. (Section 327, *Excise Tax Act*)

Section 205 – Offence – confidential information

This section makes it an offence to contravene the confidentiality provisions in section 192 regarding information gathered by Revenue Canada in the administration or enforcement of the Act. Conviction carries a fine of up to \$5,000, imprisonment for up to 12 months, or both. (Section 328, *Excise Tax Act*)

Section 206 – Other contraventions

Every person who contravenes a provision of the Act or regulations, the contravention of which is not specified elsewhere in the Act to be an offence, is guilty of an offence. A person convicted of the offence by way of indictment is liable to a fine of up to \$100,000, imprisonment for up to 5 years, or both. A person found guilty on summary conviction faces a fine of up to \$10,000, imprisonment for up to 2 years, or both.

Section 207 – Compliance orders

If a person has been convicted for non-compliance with a provision of the Act or regulations, the court has the authority to enforce compliance with the provision.

A person convicted for failing to comply with a provision of the Act is not liable to pay a penalty imposed under section 232 for the same failure unless a notice of the penalty is sent or served on the person before the information or complaint giving rise to the conviction was laid or made. (Subsections 326(2) and (3), *Excise Tax Act*)

Section 208 – Officers of corporations, etc.

This section provides that where a corporation or other entity or organization is convicted of an offence under the Act, every officer, director and agent of that organization who assented to or participated in the commission of the offence is also guilty of the offence and liable to the punishment provided for the offence. (Section 330, *Excise Tax Act*)

Section 209 – Power to decrease punishment

The court has no authority, in respect of any prosecution or proceeding under the Act, to impose less than the minimum punishment specified for an offence under the Act. (Section 331, *Excise Tax Act*)

Section 210 – Information or complaint

An information or complaint concerning an offence under the Act may be made by an officer of the Department, the R.C.M.P. or by a person authorized by the Minister. Any information or complaint relating to an offence under the Act may relate to one or more offences and may be heard, tried or determined by any court where the accused is resident, carrying on a business, found, apprehended or in custody. (Section 332, *Excise Tax Act*)

Proceeds of Crime

Sections 211 to 213 are proceeds of crime provisions that make it an offence to possess or launder money or property derived from the illegal production, possession or sale of alcohol and tobacco products and establish the framework for federal enforcement agencies to seize the proceeds obtained from serious alcohol and tobacco offences under the Act.

Section 211 – Property obtained from offences

This section makes it an offence to knowingly possess property or proceeds of property that were acquired by reason of the commission of or conspiracy to commit a tobacco or alcohol offence under subsection 194(1) (unlawful manufacturing, packaging or stamping tobacco products), subsection 196(1) (unlawful possession or sale of tobacco products), subsection 203(1) (certain serious alcohol offences) or subsection 212(1) (concealing property or proceeds obtained by the commission of offences). A person convicted by way of indictment is liable to a fine of up to \$500,000, imprisonment for up to 5 years, or both. On summary conviction the person is liable to a fine of up to \$100,000, imprisonment for up to 2 years, or both. (Section 126.1, *Excise Act*)

Section 212 – Laundering proceeds of certain offences

This section makes it an offence to deal with property or proceeds of property with intent to conceal, knowing that the property or proceeds were obtained by reason of the commission of or conspiracy to commit a tobacco or alcohol offence under subsection 194(1) (unlawful manufacturing, packaging or stamping tobacco products), subsection 196(1) (unlawful possession or sale of tobacco products), or subsection 203(1) (certain serious alcohol offences). A person found guilty on indictment is liable to a fine of up to \$500,000, imprisonment for up to 5 years, or both. A person found guilty of the offence on summary conviction is liable to a fine of up to \$100,000, imprisonment for up to 2 years, or both. (Section 126.2, *Excise Act*)

Section 213 – Part XII.2 of *Criminal Code* applicable

Sections 462.3 and 462.32 to 462.5 of the *Criminal Code* allow for the seizure and forfeiture of proceeds derived from the commission of enterprise crime offences. This section makes provisions of the *Criminal Code* relating to enterprise crime offences applicable to proceedings concerning the offences under subsection 194(1) (unlawful manufacturing, packaging or stamping tobacco products), subsection 196(1) (unlawful possession or sale of tobacco products), subsection 203(1) (certain serious alcohol offences), section 211 (possession of property or proceeds obtained by the commission of offences) or section 212 (concealing property or proceeds obtained by the commission of offences). (Section 126.3, *Excise Act*)

Penalties

Sections 214 to 231 provide for the imposition of administrative penalties in cases where licensees, registrants or other persons fail to comply with particular sections of the Act. Persons liable to pay an administrative penalty may request the Minister to review the matter under section 250.

Section 214 – Contravention of section 33 or 36

A tobacco licensee who contravenes section 33 (requirement to package and stamp tobacco products) or section 36 (requirement to enter unstamped tobacco products into an excise warehouse) is liable

to a penalty equal to 200% of the duty imposed on the tobacco products involved in the contravention.

Section 215 – Contravention of section 37, 39, 45, 133 or 135

This section specifies a penalty for contraventions of section 37 (requirement to have tobacco markings on containers of tobacco products entered into an excise warehouse), section 39 (removal of raw leaf tobacco or waste tobacco), section 45 (improper entering of a tobacco product into an excise warehouse), section 133 (improper entering of non-duty-paid packaged alcohol into an excise warehouse) or section 135 (improper removal of non-duty-paid packaged alcohol from an excise warehouse). The penalty is an amount of up to \$25,000.

Section 216 – Diversion of duty-free alcohol

An excise warehouse licensee is liable to a penalty where non-duty-paid packaged alcohol removed from an excise warehouse under section 130 is diverted. An excise warehouse licensee or special excise warehouse licensee is liable to a penalty where duty-free tobacco products removed from an excise warehouse under subsection 46(2), 46(3) or 47(2) or from a special excise warehouse under subsection 46(4) are diverted. The penalty is equal to 200% of the duty that was imposed on the alcohol or tobacco product.

Section 217 – Other diversions

A person is liable to a penalty if the person acquires packaged alcohol or a tobacco product on a duty-free basis because of its intended use or destination and the alcohol or tobacco product is subsequently used for a purpose or sent to a destination in respect of which duty is payable. The penalty is 200% of the duty that was imposed on the alcohol or tobacco product.

Section 218 – Contravention of section 70

A person who contravenes section 70 (improper supply of bulk alcohol) is liable to a penalty. In the case of an improper supply of bulk spirits, the penalty is equal to 200% of the duty imposed on the bulk spirits. In the case of an improper supply of bulk wine, the

penalty is equal to \$1.0244 per litre of bulk wine improperly supplied.

Section 219 – Contravention of section 71, etc.

A person who contravenes section 71 (improper dealing with bulk alcohol by alcohol registrant), section 72 (improper use or disposal of bulk alcohol by licensed user) or section 74 (improper exportation of bulk alcohol) is liable to a penalty. In the case of a contravention involving bulk spirits, the penalty is equal to the duty imposed on the bulk spirits. If bulk wine is involved, the penalty is equal to \$0.5122 per litre of bulk wine.

Section 220 – Contravention of section 86

A ferment-on-premises registrant is liable to a penalty equal to \$0.5122 per litre of packaged wine if the registrant stores packaged wine at the registrant's ferment-on-premises facility.

Section 221 – Unauthorized possession, etc. of SDS

A person who uses, possesses, supplies, imports, exports or disposes of specially denatured spirits such that any of sections 93 to 99 is contravened is liable to a penalty equal to \$10 per litre of specially denatured spirits involved in the contravention.

Section 222 – Unauthorized delivery of wine container

An alcohol licensee or an excise warehouse licensee who delivers a marked special container of wine other than to a bottle-your-own premises or an excise warehouse is liable to a penalty equal to 50% of the duty that was imposed on the wine in the marked container. The penalty does not, however, apply if the excise warehouse licensee exports an imported marked special container of wine.

Section 223 – Contravention of section 83 or 90

The importer of a marked special container of wine who does not deliver the container to a bottle-your-own premises or the importer's excise warehouse immediately after its release under the *Customs Act* is liable to a penalty equal to 50% of the duty that was imposed on the wine in the container. The same penalty applies to an

unauthorized person who removes wine from a marked special container of wine.

Section 224 – Contravention of section 76, 79 or 81

A person, other than a person authorized under section 76 or 81, who marks a special container of alcohol is liable to a penalty equal to 50% of the duty imposed on the alcohol in the container. The same penalty applies to an excise warehouse licensee who imports a marked special container of spirits and who fails, after its release under the *Customs Act*, to immediately enter the container of spirits into the licensee's excise warehouse.

Section 225 – Unauthorized delivery of spirits container

An excise warehouse licensee who delivers a marked special container of spirits other than to another excise warehouse or the premises of a registered user is liable to a penalty of 50% of the duty that was imposed on the spirits in the container. The penalty does not, however, apply if the excise warehouse licensee exports an imported marked special container of spirits.

Section 226 – Unauthorized removal – spirits

A person, other than a registered user, who removes spirits from a marked special container of spirits is liable to a penalty equal to 50% of the duty that was imposed on the spirits in the container.

Section 227 – Contravention of section 138

An excise warehouse licensee who from one of the licensee's premises, supplies to a single retail store more than 60% of the total annual volume of packaged alcohol supplied from the premises to all retail stores, is liable to a penalty equal to \$1,000 and 50% of the duty imposed on the alcohol supplied in excess of the 60% ceiling. The penalty does not, however, apply to packaged alcohol supplied in accordance with subsection 138(2) to a retail store of an alcohol licensee.

Section 228 – Failure to comply

A person is liable to a penalty not exceeding \$25,000 if the person fails to comply with:

- the record-keeping requirements under sections 186 and 187;
- a notice to provide information under section 189 or 190;
- a licence or registration issued under the Act; or
- a regulation under the Act.

Section 229 – Failure to file return

Failure to comply with a demand by the Minister to file a return entails a penalty equal to the greater of \$250 and 5% of the duty outstanding for the period specified in the demand. (Section 283, *Excise Tax Act*)

Section 230 – Failure to provide information

A person who fails to provide information or a record as and when required under the Act is liable to a penalty of \$100 for every failure unless, in the case of a failure to provide information in respect of another person, the person has made a reasonable effort to comply. (Section 284, *Excise Tax Act*)

Section 231 – False statements or omissions

Every person who, under circumstances amounting to gross negligence, is a party to the making of a false statement or omission in a return or other document is liable to a penalty equal to the greater of \$250 and 25% of the amount by which any duty was reduced, or refund was increased, as a result of the false statement or omission. (Section 285, *Excise Tax Act*)

Penalty Imposition

Section 232 – Notice of imposed penalty

The Minister has the authority to impose a penalty on a person in respect of a contravention under any of sections 214 to 231 by serving on the person a written notice of the penalty or by sending the notice by certified or registered mail. A penalty may be imposed

in addition to the seizure or forfeiture of an item or the suspension or cancellation of a licence or registration arising from the same event as the contravention. (Subsections 109.3(1) and (3), *Customs Act*)

Section 233 – When penalty becomes payable

A penalty under the Act is payable from the time notice of the penalty is served on or sent to the person liable for the penalty. (Section 109.4, *Customs Act*)

Section 234 – Interest on penalties

If a penalty has been imposed under section 232, interest runs for the period beginning on the day after the notice was served or sent and ending on the day the penalty was paid, except that no interest is payable if the penalty is paid within 30 days of the notice being served or sent. (Section 109.5, *Customs Act*)

Section 235 – Review of imposed penalty

A penalty imposed under section 232 is not reviewable except by way of a request to the Minister for a decision under section 250. (Section 127, *Customs Act*)

Inspections

Section 236 – Inspections

A person authorized by the Minister may, for the purposes of the administration or enforcement of the Act, inspect, audit or examine records, property or processes that may be relevant in determining the obligations or refund entitlement of any person under the Act. The authorized person may enter any premises or place of business and require persons to offer reasonable assistance. However, where the premises sought to be entered is a dwelling house, the consent of the occupant or a warrant issued by a judge is required. (Sections 287 and 288, *Excise Tax Act*)

Seizures

An officer may seize any item which the officer believes on reasonable grounds relates to a contravention of the Act or which was used to transport any item relating to a contravention.

Section 237 – Seizure

An officer who believes on reasonable grounds that there has been a contravention of the Act or the regulations has the authority to seize any item that the officer believes on reasonable grounds relates to the contravention or was used to commit the contravention, or transport any item to which the contravention relates, or any item that provides evidence relating to the contravention. The officer is required to give notice of the seizure to any person entitled to claim an interest in the seized item under section 258. (Section 110, *Customs Act*)

Section 238 – Report to Deputy Minister

The officer who seizes an item under section 237 or 239 is required to immediately report the circumstances of the seizure to the Deputy Minister. (Section 128, *Customs Act*)

Section 239 – Information for search warrant

A justice of the peace may issue a search warrant authorizing an officer to search a building, receptacle or place for an item and seize it, if the justice of the peace is satisfied by information on oath that there are reasonable grounds to believe that any of the following will be found in the building, receptacle or place:

- any item relating to a contravention of the Act or regulations or used to commit the contravention;
- a conveyance made use of in connection with the item; or
- anything that will provide evidence of a contravention of the Act or regulations. (Section 111, *Customs Act*)

Section 240 – Custody of things seized

Any item seized under section 237 or 239 is to be immediately placed in the custody of an officer. If an item is seized as evidence it

shall be returned as soon as the proceedings in which it is required are concluded. (Section 114, *Customs Act*)

Section 241 – Copies of records

Copies may be made of records seized or examined. Once certified by the Minister or an officer, they are admissible in court in place of the original. Records seized as evidence under the Act shall not be detained for more than 3 months unless the person from whom they were seized agrees to their further detention, a justice of the peace orders their further detention, or judicial proceedings in which they may be required are instituted. (Section 115, *Customs Act*)

Section 242 – Seizure by peace officer

A peace officer who seizes or detains anything which the peace officer suspects is subject to seizure under the Act is required to notify an officer of the seizure or detention and describe the item seized or detained. (Section 116, *Customs Act*)

Return of Things Seized

Section 243 – Certain things not to be returned

Alcohol, raw leaf tobacco, tobacco products or specially denatured spirits seized under the Act cannot be returned to anyone or sold. The exception to this rule is if the seizure was made in error. An item seized in error may be returned.

Section 244 – Return if security provided

The Minister may return any item seized under section 237 or 239 on receipt of security equal to the value of the item at the time of seizure. (Section 117, *Customs Act*)

Section 245 – Dealing with things seized

The Minister may sell, destroy or otherwise deal with any item seized under section 237 or 239. If a person would be entitled to the return of a seized item if the item were available, the person is entitled to receive the value of the item at the time of the seizure or the

proceeds from the sale of the item if it was sold. (Subsections 119.1(1) and (3), *Customs Act*)

Forfeitures

Sections 246 to 248 deal with forfeitures. Subject to review or appeal, items seized under the Act are forfeited to the Crown.

Section 246 – Forfeiture from time of contravention

When an item has been seized under section 237 or 239 in connection with a contravention of the Act or regulations, the item is considered to have been forfeited to the Crown from the time of the contravention and nothing is required to be done after the contravention to bring the forfeiture into effect. (Section 122, *Customs Act*)

Section 247 – Things no longer forfeit

Where security is received in respect of a seized item, the security is forfeit in place of the item, from the time the security is received. (Section 121, *Customs Act*)

Section 248 – Review of forfeiture

The forfeiture of an item seized under section 237 or 239 or security held in lieu of the item is final and not reviewable, except that the person who owns the seized item or from whom the item was seized may request the Minister to make a decision under section 250. (Section 123, *Customs Act*)

Review of Seizure or Imposed Penalty

Persons who own items that were seized or from whom items were seized under section 237 or 239 and persons liable to pay an administrative penalty may request that the Minister review the matter. The Minister's decision may be appealed to the Federal Court.

Section 249 – Seizures made in error

The Minister may release an item if the Minister determines it was seized in error.

Section 250 – Request for Minister's decision

A person who owns an item that is seized under section 237 or 239, from whom an item is so seized or security is received under section 244, or who has received notification of a penalty imposed under section 232 may, within 30 days of the seizure or the service or sending of the notice under section 232, request a decision by the Minister under section 252. (Section 129, *Customs Act*)

Section 251 – Notice of reasons for action

If a person has requested a decision of the Minister under section 252, the Deputy Minister shall immediately give the person the reasons for the seizure or the notice served or sent under section 232. The person then has 30 days to submit evidence in reply, which may be by affidavit. (Section 130, *Customs Act*)

Section 252 – Decision of the Minister

When the time for submitting evidence has past, the Minister shall consider the circumstances of the case and decide whether a contravention of the Act or regulations occurred that would justify the seizure or the notice being served or sent under section 232. The Minister's decision is not subject to review except by way of an appeal to the Federal Court under section 255. (Section 131, *Customs Act*)

Section 253 – If there is no contravention, etc.

If the Minister decides under section 252 that there was no contravention justifying the seizure of an item, the item or any security taken for it is to be returned without delay. If the Minister decides that a penalty imposed under section 232 was not justified, the amount of the penalty and any interest paid in respect of the penalty is to be returned along with interest at the prescribed rate computed on that amount. (Section 132, *Customs Act*)

Section 254 – If there is contravention

If the Minister decides under section 252 that there was a contravention in respect of an item seized, the Minister may

- return the item on receiving an amount of money equal to the value of the item when it was seized;
- return a portion of the security taken for the item; or
- require an amount of money if the Minister considers that insufficient security for the item was taken.

If the Minister decides that the penalty levied under section 232 was insufficient, the Minister may require an additional amount of money not exceeding the maximum specified for the contravention. Alternatively, taking into account the circumstances relating to the contravention, the Minister may reduce or waive the penalty imposed. (Section 133, *Customs Act*)

Section 255 – Federal Court

A person who requested a decision of the Minister under section 252 may, within 90 days of being notified of the Minister's decision, appeal the decision to the Federal Court. (Section 135, *Customs Act*)

Section 256 – Restoration of items pending appeal

If the Federal Court orders that a seized item is to be returned and the Crown appeals that order, the seized item may be returned to the person pending the appeal by the Crown provided the person gives sufficient security to the Crown to ensure the return of the item or payment of its value to the Crown if the appeal is allowed. (Section 136, *Customs Act*)

Third Party Claims

A person who claims an interest in an item seized under section 237 or 239 may apply, within 60 days of the seizure, for an order declaring that their interest in the seized item is not affected by the seizure.

Section 257 – Meaning of “court”

This section identifies the court in the different provinces and territories from which a person claiming an interest in a seized item may seek an order under section 259 declaring that the person's interest in the seized item is not affected by the seizure.

Section 258 – Claiming interest

A person who claims an interest in an item seized under section 237 or 239 as owner or otherwise (other than the person who had possession of the item when it was seized) may apply to the appropriate court for an order under section 259 that the person's interest in the item is not affected by the seizure. The application is to be made within 60 days after the seizure. (Section 138, *Customs Act*)

Section 259 – Order

An applicant under section 258 is entitled to an order declaring that the applicant's interest in a seized item is not affected by the seizure, and declaring the nature of the applicant's interest, where the court is satisfied that the applicant:

- acquired an interest in the item in good faith before the contravention which resulted in the seizure of the item;
- is innocent of any complicity or collusion concerning the contravention; and
- exercised reasonable care that the person having possession of the item would not be likely to contravene the Act or regulations. (Section 139, *Customs Act*)

Section 260 – Appeal

An order of a court under section 259 may be appealed by the applicant or the Crown. The appeal is governed by the ordinary procedure applicable to appeals from the court. (Section 140, *Customs Act*)

Section 261 – Delivery to applicant

Where an order has been obtained under section 259 or 260, an application may be made for delivery of the item seized. Where the item has been sold, all or a portion of the net proceeds of sale are to be paid according to the interest of the applicant in the item at the time of the contravention in respect of which it was seized.

(Section 141, *Customs Act*)

Collection

The Minister may take collection action where a person fails to pay any duty or other amount payable under the Act. The collection procedures, which are similar to those under the GST legislation, include certificates of default, garnishment, deduction or set-off and the seizure and sale of items belonging to a tax debtor. Directors of a corporation may also be jointly and severally liable together with the corporation for any payment of duty or interest.

Section 262 – Debts to Her Majesty

Duty and other amounts owing under the Act are debts due to Her Majesty and may be enforced through the court process. An action in court to recover duty or other amount owing may only be commenced, in the case of an amount that may be assessed, if the person has been or may be assessed, and in any other case if not more than 4 years have passed since the person became liable to pay the amount. (Section 313, *Excise Tax Act*)

Section 263 – Security

The Minister may accept security in respect of any amount payable under the Act. In the case of an objection to or an appeal from an assessment, the Minister is required to accept security satisfactory to the Minister for the payment of any amount in dispute. (Section 314, *Excise Tax Act*)

Section 264 – Assessment before collection

The Minister may not take any collection action under sections 265 to 270 in respect of an amount owing, except for interest, until a notice of assessment for the amount has been issued. Once a notice

of assessment has been issued, any portion of the amount assessed that is unpaid becomes immediately payable. The Minister may postpone collection action in respect of all or part of an assessed amount if the amount assessed is in dispute. (Section 315, *Excise Tax Act*)

Section 265 – Certificates

A certificate of the Minister certifying that duty or another amount is payable under the Act may be registered in the Federal Court. Upon registration, proceedings may be taken to collect the amount certified as if the certificate were a judgment of the Court. The Court may issue a notification or “memorial” that may be registered in a province to create a charge or lien against land or other property in which the person has an interest. Any property bound by the registration of a certificate or memorial cannot be sold or otherwise disposed of without the written consent of the Minister. (Section 316, *Excise Tax Act*)

Section 266 – Garnishment

This section authorizes the collection of any amount payable under the Act by way of garnishment. Garnishment may be used in respect of amounts owing to a person indebted to Her Majesty under this Act and in respect of amounts to be loaned or advanced to the person. A third person who fails to comply with a garnishment notice is liable to Her Majesty for the amount not paid. Amounts paid in respect of a garnishment notice are deemed to have been paid to or on behalf of the debtor. (Section 317, *Excise Tax Act*)

Section 267 – Recovery by deduction or set-off

If a person who is indebted under this Act is or may be owed an amount by the Crown, the Minister may require the satisfaction of all or part of the person's indebtedness under the Act out of the amount owing. (Section 318, *Excise Tax Act*)

Section 268 – Acquisition of debtor's property

The Minister is authorized to acquire and dispose of any interest in property of a person indebted under this Act as an aid to collecting the debt. (Section 319, *Excise Tax Act*)

Section 269 – Money seized from debtor

The Minister may require a person holding money seized in the administration or enforcement of the criminal law of Canada from a debtor under this Act to pay the money to the Receiver General on account of the debtor's indebtedness. (Section 320, *Excise Tax Act*)

Section 270 – Seizure – failure to pay duty, etc.

Where a licensee fails to pay duty or other amount as required under the Act, the Minister may give written notice of the Minister's intention to direct that the licensee's property be seized and sold. If payment is not made within 30 days as set out in the notice, the Minister may direct that the licensee's property be seized. Seized property is to be held for 10 days at the licensee's expense and, should the default in payment continue, the property may be sold and the proceeds applied to the amount owing and all expenses. Any surplus resulting from the sale is to be paid to the licensee. Property which is exempt from seizure according to applicable provincial law are exempt from seizure under this section. (Section 321, *Excise Tax Act*)

Section 271 – Person leaving Canada or defaulting

Where the Minister suspects that a person has left or is about to leave Canada in advance of the due date for payment of any duty or other amount, the Minister may by notice demand that the person pay without delay all amounts for which they are liable or will be liable under the Act. If the person fails to pay the amount demanded, the Minister may direct that the person's property be seized and sold in accordance with section 270. (Section 322, *Excise Tax Act*)

Section 272 – Liability of directors

Directors of a corporation who hold office at the time the corporation fails to pay duty or interest as and when required under the Act are jointly and severally liable together with the corporation for the payment provided that

- a certificate for the amount of the corporation's liability has been registered in the Federal Court under section 265 and execution has been returned unsatisfied;

- the corporation has commenced liquidation or dissolution proceedings or has been dissolved and a claim for the amount of the liability has been proved within 6 months of the commencement of the proceedings or the dissolution; or
- the corporation has made an assignment or a receiving order has been made against it under the *Bankruptcy and Insolvency Act* and a claim for the amount owing has been proved within 6 months of the assignment or receiving order.

A director is not, however, liable if the director exercised a degree of care, diligence and skill to prevent the corporation from becoming indebted that a reasonably prudent person would have exercised in comparable circumstances. (Section 323, *Excise Tax Act*)

Section 273 – Compliance by unincorporated bodies

In the case of unincorporated bodies other than individuals and partnerships, the obligations and liabilities under the Act are the joint and several liability and responsibility of every member of the body holding a senior office, or where there are no senior officers, every member of any management committee, and where there are no senior officers or management committee, every member of the body. However, no person may be assessed more than 2 years after the day the person ceased to be jointly and severally liable unless the person was grossly negligent or participated or acquiesced in making an untruthful statement or omission in a return or other document. The Minister may assess any person liable under this section in respect of an amount owing by an unincorporated body. (Section 324, *Excise Tax Act*)

Section 274 – Liability re transfers not at arm's length

This section provides that in the case of a non-arm's length transfer of property by a person liable to make a payment under the Act, the transferor and the transferee are jointly and severally liable to pay the amount determined under subsection 274(1). (Section 325, *Excise Tax Act*)

Evidence and Procedure

Sections 275 to 279 deal with the serving, issuing or sending of a notice or other document by mail or other means of delivery and

specifies matters that will be considered as evidence in regard to the Act.

Section 275 – Service

This section deals with what constitutes good service in various situations. A notice or other document to be served on or sent to a person that is a partnership, a body such as a society, club or association, or a business not carried on in the person's name may be sent to the name of the partnership, the name of the body, or the name under which the business is carried on. In general, a notice is validly served on a person if it is left with an adult person employed at the place of business of the person. (Section 333, *Excise Tax Act*)

Section 276 – Sending by mail

This section provides that anything sent by first class, registered or certified mail is deemed to have been received on the day it was mailed, except that an amount payable under the Act to the Receiver General is only considered to have been paid when it is actually received. (Section 334, *Excise Tax Act*)

Section 277 – Proof of service by mail

The purpose of this section is to establish how certain matters of fact may be proved by affidavit. An affidavit of an officer of the Department stating that the officer has knowledge of the case may be evidence that:

- a request, notice or demand was sent by mail to a named person on a stated day;
- a request, notice or demand was personally served on a named person on a stated day;
- a named person has not made a return, application, statement, or similar filing, or that the return, application, statement or similar filing was made on a stated day;
- the nature and contents of an attached document or copy is as it appears to be; or
- a notice of assessment was sent to a named person and that a notice of objection or appeal from the assessment was not received in the time allowed.

Where a notice or demand is mailed by the Minister, the date of mailing is deemed to be the date of the document. (Section 335, *Excise Tax Act*)

Section 278 – Certificate of analysis

This section authorizes an analyst to issue a certificate or report stating the results of the analyst's analysis or examination.

Section 279 – Certificate or report of analyst as proof

The certificate or report of an analyst is admissible in court without proof of the signature of the analyst who made it. However, the party against whom the certificate or report is intended to be produced must be given reasonable notice of the Crown's intention to use the certificate or report and is to be provided with a copy. (Section 114, *Excise Act*)

PART 7

REGULATIONS

Section 280 – Regulations – Governor in Council and Minister

This section provides authority to the Governor in Council to make regulations to carry out the purposes and provisions of the Act including setting out the conditions on which a licence or registration may be issued or renewed and the activities a licensee or registrant may carry on; designating certain classes of goods as ships' stores; requiring any class of person to make returns; and requiring persons to provide their Social Insurance Number to the Minister. As well, the Minister is given authority to make regulations regarding certain matters under sections 37 and 53 of the Act.

Regulations normally take effect from the day they are published in the *Canada Gazette* or from a later date mentioned in the regulation. However, a regulation made under the Act may take effect from an earlier date if the regulation:

- has a relieving effect only;
 - corrects an ambiguity or deficiency that is not consistent with the objects of the Act or the regulations;
 - is consequential to an amendment of the Act that is applicable prior to publication of the regulation; or
 - gives effect to a budgetary or other public announcement.
- (subsection 277(2), *Excise Tax Act*)

PART 8

CONSEQUENTIAL AND RELATED AMENDMENTS AND COMING INTO FORCE

Part 8 sets out amendments to other legislation which will be affected by the implementation of the *Excise Act, 1999*. It should be noted that only the main consequential amendments are shown in Part 8. Other consequential amendments, particularly to the *Customs Act*, are in the process of being drafted.

Section 281 – *Customs Tariff*

Currently, section 21 of the *Customs Tariff* imposes duty on imported spirits, beer and tobacco products equivalent to the excise duty imposed under the current *Excise Act* on domestic spirits, beer and tobacco products. Imported wine is subject to excise tax under the *Excise Tax Act*.

Under the proposed new excise structure, duty equivalent to the duty imposed on domestic spirits and wine under the *Excise Act, 1999* will be imposed under the *Customs Tariff* on imported bulk spirits and imported packaged spirits and wine. Imported raw leaf tobacco and tobacco products will be subject to duty under the *Excise Act, 1999*.

The amendments to the *Customs Tariff* are intended to reflect the new structure.

Section 21 provides new definitions that are consistent with terms used in the *Excise Act, 1999*.

Section 21.1 imposes duty on imported bulk spirits equivalent to the duty imposed by section 108 of the *Excise Act, 1999* on domestic spirits. The duty is payable at the time the spirits are taken for use or packaged and is payable under the *Excise Act, 1999*.

Section 21.2 imposes duty on imported packaged spirits and wine equivalent to the duty imposed under the *Excise Act, 1999* by section 108 or 109, in the case of spirits, and section 120, in the case of wine. The duty is payable under the *Customs Act* at the time of importation, unless, as soon as they are released under that Act, the spirits and wine are entered into the excise warehouse of the excise warehouse licensee, or the specified premises of the licensed user, who imported the spirits or wine. In that case, the duty is payable under the *Excise Act, 1999*.

Section 21.3 ensures that the current duty on imported beer imposed under section 21 of the *Customs Tariff* continues to apply. The duty on imported beer is equal to the duty imposed by section 170 of the current *Excise Act* on domestic beer.

Sections 282 to 284 – *Excise Act*

Currently, the *Excise Act* applies to spirits, beer and tobacco products. The purpose of sections 282 to 284 is to establish that, on the coming into force of the *Excise Act, 1999*, the current *Excise Act* will only apply to beer and malt liquor.

Sections 285 to 300 – *Excise Tax Act*

Tobacco products and wine are currently subject to excise tax under the *Excise Tax Act*. This will no longer be the case when the *Excise Act, 1999* takes effect. Tobacco products and wine will be subject to duty under the new Act.

Accordingly sections 285 to 300 remove relevant references to tobacco products and wine from the *Excise Tax Act*.

Sections 301 and 302 – *Importation of Intoxicating Liquors Act*

Section 301 amends the *Importation of Intoxicating Liquors Act* to ensure that the terminology in that Act reflects new terminology introduced in the *Excise Act, 1999* (such as the terms “bulk”, “packaged”, “excise warehouse” and “spirits”). The *Importation of Intoxicating Liquors Act* is also amended to permit distillers importing bulk spirits into a province to bottle the spirits without blending them beforehand with domestic spirits. Currently, under the

Act distillers can only bottle, without blending, spirits that are imported from the United States, Mexico or Chile.

Sections 303 to 311 – *Tax Court of Canada Act*

These sections amend the *Tax Court of Canada Act* to provide the Tax Court with jurisdiction to handle appeals, references and related proceedings under the *Excise Act, 1999*.

Coming into Force

Section 312 – Coming into force

Recognizing that industry and Revenue Canada will need time to adapt to the new Act, there will be a delay between Royal Assent and the coming-into-force of the new Act. The Act or any part of it will come into force on a date or dates fixed by order of the Governor in Council.

Schedule 1

Schedule 1 specifies the rates of the duty imposed on tobacco products by section 41 of the Act. The rates of duty vary depending on the type of tobacco product (cigarettes, tobacco sticks, other manufactured tobacco, cigars and raw leaf tobacco) and the province of sale. Except for cigars and raw leaf tobacco, the rates of duty combine the existing rates of excise duty and tax under the current *Excise Act* and the *Excise Tax Act* respectively. The duty on cigars and raw leaf tobacco is the current excise duty imposed on those products under the existing *Excise Act*. (Part II of the Schedule to the *Excise Act*, Schedule II to the *Excise Tax Act*)

Schedule 2

This Schedule specifies the rate of additional duty imposed on cigars by section 42 of the Act. The duty is the same as the existing excise tax imposed on cigars under the *Excise Tax Act*. (Section 4, Schedule II to the *Excise Tax Act*)

Schedule 3

This Schedule sets out the rates of duty imposed by section 50 of the Act on domestic tobacco products that are exported by the tobacco licensee who manufactured the products. The rates of duty are the same as those currently enumerated in subsection 23.2(1) of the *Excise Tax Act*.

Schedule 4

Schedule 4 specifies the rates of duty imposed on wine by sections 119 and 120 of the Act. The rates of duty are the same as those currently applicable to wine under section 27 of the *Excise Tax Act*.

Transitional Provisions

The transitional provisions for the proposed new Act are in the process of being drafted. The following briefly outlines the proposed measures to be included in the Act to ensure a smooth transition to the new excise framework.

Bonds

The current *Excise Act* is proposed to be amended to continue to require that bonds be posted by distillers and tobacco manufacturers licensed under the Act until the earlier of the cancellation of the bond by the Minister and 2 years after the implementation of the new Act. This will allow Revenue Canada to finalize liabilities under the current *Excise Act* before the bonds are relinquished as a collection tool.

Licensing

The licensing and registration provisions of the *Excise Act, 1999* are proposed to take effect before the implementation of the new framework to enable Revenue Canada to issue licences and registrations prior to the coming into force of the new legislation.

Warehousing

Imported Alcohol and Tobacco Products

As part of the transition, all imported bulk and packaged alcohol destined for the domestic market are proposed to be required to be removed from customs bonded warehouses on the date of implementation. As a result of the removal from the customs warehouse system:

- The GST and regular customs duties on spirits and wine removed from a customs warehouse are proposed to become payable.
- The customs duty equivalent to the excise duty imposed on packaged spirits and the excise tax imposed on packaged wine are also proposed to become payable. However, payment may be deferred if the products are immediately entered into an excise warehouse in accordance with the *Excise Act, 1999*.
- The possession rules under the new Act are proposed to apply to bulk alcohol.

Alcohol in a customs bonded warehouse after the implementation date may only be exported or, in the case of packaged alcohol, sold in the duty-free market.

Importers of alcohol and tobacco products intended for export or the duty-free market are proposed to be given the option of transferring their imported products from the customs warehouse system to the excise warehouse system upon implementation.

Domestic Packaged Spirits and Tobacco Products

If the new system is implemented, all domestic spirits and tobacco products are proposed to be required to be removed from excise bonding warehouses.

- The tobacco products may only be entered into an excise warehouse or a special excise warehouse, exported or delivered for sale in the duty-free market.
- Packaged spirits may be entered into an excise warehouse to defer the payment of duty on the spirits.

- Bulk spirits are proposed to be subject to the possession rules under the new Act.

Bulk spirits and tobacco products not removed from an excise bonding warehouse on the implementation date are proposed to be subject to the penalty and forfeiture provisions of the new legislation. Packaged spirits not removed from an excise bonding warehouse on the implementation date are proposed to be subject to the payment of duty.

Liability for Duty

Spirits and Wine

The excise duty imposed on spirits by the current Excise Act that has not been paid under that Act as of the implementation date are proposed to be deemed imposed by the new Act.

The customs duty equivalent to the excise duty imposed on imported spirits by current section 21 of the *Customs Tariff* and the excise tax imposed on imported packaged wine by the *Excise Tax Act* that have not been paid as of the implementation date are proposed to be deemed imposed by new section 21.1 or 21.2 of the *Customs Tariff*.

Duty is proposed to be imposed by the *Excise Act, 1999* on all inventories of packaged wine not yet delivered by the manufacturer to a purchaser at the time of implementation, where the manufacturer is not a small manufacturer for purposes of the *Excise Tax Act*. The duty is proposed to not be payable at the time of imposition if the wine is entered into an excise warehouse in accordance with the new Act.

- Duty is also proposed to be imposed by the *Excise Act, 1999* on all packaged wine entered into the excise warehouse of an excise warehouse licensee who is not an alcohol licensee.

The excise tax paid on domestic wine entered into an excise warehouse on the date of implementation is proposed to be refunded to the licensee of the excise warehouse.

Tobacco Products

The excise duty imposed on tobacco products by the current *Excise Act* that has not been paid under that Act as of the implementation date is proposed to be deemed imposed by the new Act.

The current excise tax and customs duty equivalent to the excise duty imposed on imported tobacco products that have not been paid as of the implementation date are proposed to be deemed imposed by the *Excise Act, 1999*.

If the new system is implemented, the excise-duty-paid inventories of tobacco manufacturers that are licensed under the *Excise Tax Act* are proposed to be subject to duty under the *Excise Act, 1999* equal to the excise tax imposed by the *Excise Tax Act*.

The imposition of additional duty by the *Excise Act, 1999* at the time of implementation of the new structure is necessary because the current excise duty and excise tax are proposed to be combined under the new Act.

Draft Regulations

Published by
The Honourable Herb Dhaliwal, P.C., M.P.
Minister of National Revenue

REGULATIONS RESPECTING EXCISE LICENCES AND REGISTRATIONS

Interpretation

1. The definitions in this section apply in these Regulations.

"Act" means the *Excise Act, 1999*; (*Loi*)

"alcohol registration" means an alcohol registration issued under section 16 of the Act; (*autorisation d'alcool*) 5

"ferment-on-premises registration" means a ferment-on-premises registration issued under section 14 of the Act; (*autorisation de vinerie libre-service*)

"licence" means a licence issued under section 13, 18 or 19 of the Act; (*licence*) 10

"licensee" means a person to whom the Minister has issued a licence under the Act; (*titulaire de licence*)

"registrant" means a person to whom the Minister has issued a registration under the Act; (*détenteur autorisé*)

"registration" means an alcohol registration, an SDS registration, a 15 user's registration or a ferment-on-premises registration; (*autorisation*)

"SDS registration" means an SDS registration issued under section 17 of the Act; (*autorisation de spiritueux spécialement dénaturés*)

"user's registration" means a user's registration issued under section 15 20 of the Act. (*autorisation d'utilisateur*)

Issuance of Licence or Registration

2. The Minister may issue a licence or registration to any person who submits to the Minister a completed application in the form authorized by the Minister, accompanied by a list of the premises to be designated 25 by the Minister for the purposes of the licence or registration, and

(a) in the case of a person applying for a licence, the person meets the requirements described in section 3; or

(b) in the case of a person applying for a special denatured spirits registration, a ferment-on-premises registration or a user's 30

registration, the person is a citizen or a permanent resident of Canada, or is incorporated in Canada.

Prescribed Requirements for Licensee

3. (1) An individual may apply for a licence if the individual

(a) is a citizen or permanent resident of Canada; 5

(b) is at least eighteen years of age; and

(c) has sufficient financial resources to conduct the business in a responsible manner.

(2) A partnership or an unincorporated body may apply for a licence if the partnership or unincorporated body 10

(a) in the case of a partnership or unincorporated body composed of individuals,

(i) is composed of individuals at least one of whom meets the requirements set out in paragraphs (1)(a) and (b), and

(ii) has sufficient financial resources to conduct its business in a responsible manner; or 15

(b) in the case of a partnership or unincorporated body composed of corporations,

(i) is composed of corporations each of which meets the requirements prescribed in paragraphs (3)(a) and (b), and 20

(ii) has sufficient financial resources to conduct its business in a responsible manner.

(c) in the case of a partnership or unincorporated body composed of individuals and corporations,

(i) with respect to the individuals, at least one of them meets the requirements set out in paragraphs (1)(a) and (b), 25

(ii) with respect to the corporations, each of them meets the requirements prescribed in paragraphs (3)(a) and (b), and

(iii) has sufficient financial resources to conduct its business in a responsible manner. 30

if (3) A corporation may apply for a licence under these Regulations

(a) the corporation

(i) is incorporated in Canada, and

(ii) has sufficient financial resources to conduct its business in a responsible manner; and

(b) a majority of the directors of the corporation are citizens or permanent residents of Canada.

Amendment of Licence or Registration

4. The Minister may amend a licence or registration where 10

(a) the Minister receives a notification from the licensee or registrant, as described in section 9; or

(b) the legal name of the licensee or registrant has been changed.

Cancellation or Suspension of Licence or Registration

5. The Minister may cancel a licence or registration where the 15
licensee or registrant

(a) requests the Minister in writing to cancel the licence or registration; or

(b) is bankrupt.

6. Subject to section 7, the Minister may suspend or cancel a licence 20
or registration where the licensee or registrant

(a) no longer meets the requirements of an applicant for a licence or registration;

(b) ceased to carry on the business for which the licence or 25
registration was issued;

(c) is the subject of a receivership in respect of the licensee or registrant's debts;

(d) fails to comply with any Act of Parliament or of the legislature of a Province or Territory that deals with the taxation of or controls on alcohol or tobacco products, or any regulation made pursuant to 30
such an Act;

(e) acted to defraud Her Majesty;

(f) has not met any of the requirements set out in sections 9 to 11;
or

(g) has failed to carry out the responsibilities of a licensee or registrant.

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7. (1) The Minister shall, immediately after suspending a licence or registration, give to the licensee or registrant a notice confirming the suspension and providing all relevant information concerning the grounds on which the Minister has suspended the licence or registration.

(2) The licensee or registrant may, within 90 days after the day on which the licence or registration is suspended, make representations to the Minister regarding why the licence or registration should be reinstated.

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(3) The Minister shall, before cancelling a licence or registration under section 6, give the licensee or registrant 90 days notice of the proposed cancellation and provide the licensee or registrant with all relevant information concerning the grounds on which the Minister proposes to cancel the licence or registration.

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(4) The licensee or registrant may, within 90 days after the day on which the notice referred to in subsection (3) is given, make representations to the Minister regarding why the licence or registration should not be cancelled.

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Reinstatement of Licence or Registration

8. The Minister may reinstate a suspended licence or registration where the cause for the suspension no longer exists.

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Notification of Changes to Licence or Registration Information

9. Every licensee and registrant shall, without delay, notify the Minister in writing of any changes to any of the information provided under section 2 or any notifications made under this section.

Changes to Fiscal Month

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10. Every licensee shall notify the Minister in writing of any changes to the licensee's fiscal month determined under section 13 of the Act.

Facilities, Personnel and Equipment

11. Every licensee and registrant shall provide at the premises in respect of which the licence or registration was issued

- (a) adequate space for the examination of goods by officers;
- (b) the personnel and equipment necessary to ensure that the goods to be examined by an officer are made available to the officer for examination; and
- (c) the personnel necessary to furnish information, for audit purposes, to an officer with respect to the operations and inventory system used in the premises.

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Coming into Force

12. These regulations come into force < >.

REGULATIONS RESPECTING THE DETERMINATION OF ALCOHOL

Interpretation

1. The definitions in the section apply in these Regulations.

"Act" means the *Excise Act, 1999*; (*Loi*)

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"alcoholometric tables" means the *Canadian Alcoholometric Tables, 1980*, copyright by the Minister of Supply and Services, published under the authority of the Minister of National Revenue; (*tables alcoométriques*)

"approved digital density meter" means a digital density meter that the Minister has examined and has approved as meeting the specifications set out in Schedule 1; (*densimètre numérique approuvé*)

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"approved digital thermometer" means a digital thermometer that the Minister has examined and has approved as meeting the specifications set out in Schedule 2; (*thermomètre numérique approuvé*)

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"approved glass thermometer" means a glass thermometer that the Minister has examined and has approved as meeting the specifications set out in Schedule 5; (*thermomètre de verre approuvé*)

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"approved hydrometer" means a hydrometer that the Minister has examined and has approved as meeting the specifications set out in Schedule 3; (*aréomètre approuvé*)

"approved pycnometer" means a pycnometer that the Minister has examined and has approved as meeting the specifications set out in Schedule 4; (*pycnomètre approuvé*)

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"certificate of approval" means a certificate, issued by the Minister, denoting that an instrument meets the specifications set out in the appropriate schedule; (*certificat d'approbation*)

"completely obscured alcohol" means alcohol that contains 10 g/L or more of dissolved solids and no material having a volatility that is similar to or higher than the volatility of absolute ethyl alcohol or water; (*alcool complètement obscurci*)

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"dissolved solids" means any material that remains after the evaporation of a solution; (*solides dissous*)

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"laboratory table" means the *Canadian Alcoholometric Laboratory Table, 1996*, copyright by the Minister of Public Works and Government Services, published under the authority of the Minister of National Revenue; (*table de laboratoire*)

"obscuration tables" means the *Canadian Alcoholometric Obscuration Equivalent Tables, 1993*, copyright by the Minister of Supply and Services, published under the authority of the Minister of National Revenue; (*tables d'obscurcissement*)

"partially obscured alcohol" means alcohol that contains 0.3 g/L or more of dissolved solids and less than 10 g/L of dissolved solids and no other material having a volatility that is similar to or higher than the volatility of absolute ethyl alcohol or water; (*alcool partiellement obscurci*)

"temperature of measurement" means the temperature at which a hydrometer reading is taken; (*température de mesure*)

"unobscured alcohol" means alcohol that contains less than 0.3 g/L of dissolved solids and no other material having a volatility that is similar to or higher than the volatility of absolute ethyl alcohol or water. (*alcool non obscurci*)

Determination of Quantities or Volumes of Absolute Ethyl Alcohol

2. (1) Where it is necessary for the purposes of these Regulations to use indications of measurements of density, temperature, mass or volume of quantities of alcohol in determining quantities or volumes of absolute ethyl alcohol at 20°C, those measurements shall be obtained and expressed in the following manner:

(a) the indication of density shall be obtained only by using

(i) an approved digital density meter at the standard reference temperature of 20°C,

(ii) an approved hydrometer at a temperature between -20°C and +40°C, and where the surface of the alcohol lies between two scale graduation lines, the scale graduation line that represents the lower indication of density shall be used, or

(iii) an approved pycnometer at the standard reference temperature of 20°C;

(b) the indication of the temperature shall be obtained only by using

(i) an approved digital thermometer, or

(ii) an approved glass thermometer, and where the top of the mercury column of the approved glass thermometer lies between two scale graduation lines, the scale graduation line that represents the lower indication of temperature shall be used;

(c) the indication of the mass in air shall be obtained by using scales and other weighing apparatus that have been inspected and approved for use in trade pursuant to section 8 of the *Weights and Measures Act*, and shall be expressed in kilograms; and 5

(d) the indication of the volume at the temperature of measurement, where the volume is measured by the use of meters, shall be obtained by using meters that have been inspected and approved for use in trade pursuant to section 8 of the *Weights and Measures Act*, and shall be expressed in litres. 10

(2) Where a person is required to determine a quantity or volume of absolute ethyl alcohol from unobscured, partially obscured or completely obscured alcohol at 20°C for the purpose of subsection 131(1) of the Act, the manner of determination shall be either the mass-density method or the volume-density method. 15

Specifications and Examinations of Instruments

3. (1) For the purpose of the Act, the specifications for digital density meters, digital thermometers, hydrometers, pycnometers and glass thermometers are set out in Schedules 1, 2, 3, 4 and 5, respectively. 20

(2) Where an instrument mentioned in subsection (1) has been approved as meeting the appropriate specifications, the Minister shall issue a certificate of approval with respect to that instrument and 25

(a) in the case of a digital density meter or digital thermometer, shall issue a label to be affixed to the instrument showing the last two digits of the year of the examination and the symbol shown in Schedule 6; 30

(b) in the case of a hydrometer or glass thermometer, shall mark the instrument with the last two digits of the year of the examination and the symbol shown in Schedule 6; and

(c) in the case of a pycnometer, shall record the serial number of the instrument. 35

4. Where a digital density meter, digital thermometer, hydrometer, pycnometer or glass thermometer that has been examined and in respect of which a certificate of approval has been issued under subsection 3(2) is re-examined and

(a) is approved as continuing to meet the specifications set out in Schedule 1, 2, 3, 4, or 5, whichever is appropriate, the Minister shall issue a new certificate of approval and

(i) in the case of a digital density meter or digital thermometer, issue a new label to be affixed to the instrument showing the last two digits of the year of the re-examination and the symbol shown in Schedule 6,

(ii) in the case of a hydrometer or glass thermometer, mark the instrument with the last two digits of the year of the re-examination, and

(iii) in the case of a pycnometer, record the serial number of the instrument; or

(b) is not so approved, the Minister shall cancel, in writing, the certificate of approval and

(i) in the case of a digital density meter or digital thermometer, remove the label and the symbol issued,

(ii) in the case of a hydrometer or glass thermometer, obliterate from the instrument the last two digits of the year of any previous examination and the symbol, and

(iii) in the case of a pycnometer, record the serial number.

Fees

5. (1) Where, for the purpose of the Act, a person submits a digital density meter, digital thermometer, hydrometer, pycnometer or glass thermometer to the Minister for examination, the person shall pay a fee of \$25 to the Minister for the examination.

(2) Where, under subsection 131(3) of the Act, the Minister directs that a digital density meter, digital thermometer, hydrometer, pycnometer or glass thermometer be re-examined, no fee shall be charged for the re-examination.

6. (1) Subject to subsection (2), the price to be charged per copy by the Minister for

- (a) alcoholometric tables is \$50;
- (b) a laboratory table is \$15;
- (c) obscuration tables is \$15; and
- (d) the tables described in paragraphs (a) to (c) on compact disc is \$80.

5

(2) The Minister shall provide every alcohol licensee and licensed user, at the time the licence is issued, with one copy of the alcoholometric tables, laboratory table and obscuration tables, free of charge.

Coming into Force

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7. These regulations come into force < >.

SCHEDULE 1
(Sections 1, 3 and 4)

SPECIFICATIONS FOR DIGITAL DENSITY METERS
FOR ALCOHOL

General

5

1. A digital density meter shall be an instrument that is designed to measure and display in numerical digits the density of a liquid.

Scale

2. (1) A digital density meter shall display the density in units of g/cm^3 . 10

(2) The minimum range for a digital density meter shall be from 0.00000 to 1.00000 g/cm^3 at 20°C .

Reference Temperature

3. A digital density meter shall be standardized and used to determine the density of a liquid at the standard reference temperature of 20°C with a maximum permissible error of $\pm 0.01^\circ\text{C}$. 15

Accuracy

4. A digital density meter shall display density with a maximum permissible error of $\pm 0.00001 \text{ g/cm}^3$.

Inscription

20

5. A unique serial number shall be legibly and indelibly marked on every digital density meter.

SCHEDULE 2
(Sections 1, 3 and 4)

SPECIFICATIONS FOR DIGITAL THERMOMETERS
FOR ALCOHOL

General

5

1. A digital thermometer shall be an instrument that is designed to measure and display in numerical digits the temperature in accordance with the Celsius scale, as defined in the 1990 definition of the International Temperature Scale adopted by the Comité international des poids et mesures, and in accordance with the International System of Units. 10

Scale

2. A digital thermometer shall have the following characteristics:

(a) it shall have a minimum range from -25°C to $+45^{\circ}\text{C}$; and

(b) the digital display shall have incremental steps of not more than 0.1°C . 15

Accuracy and Testing

3. Where the temperature is measured by means of a digital thermometer, the maximum permissible error shall be $\pm 0.3^{\circ}\text{C}$, between -25°C and $+45^{\circ}\text{C}$. 20

4. Where the digital thermometer is examined for compliance with the specifications set out in section 3, the maximum permissible difference between errors of any two points which are 25°C apart shall not be more than 0.4°C .

Inscription

25

5. (1) A unique serial number shall be legibly and indelibly marked on every digital thermometer.

(2) Any part, attachment or accessory of a digital thermometer that is removable shall bear either the same serial number as the main part of the instrument or a unique serial number. 30

SCHEDULE 3
(Sections 1, 3 and 4)

SPECIFICATIONS FOR HYDROMETERS FOR ALCOHOL

General

1. (1) A hydrometer shall be a glass hydrometer that is designed to 5
measure the density of mixtures of water and absolute ethyl alcohol.

(2) A hydrometer shall be graduated and calibrated in units of
density (kg/m^3) at the standard reference temperature of 20°C .

(3) A hydrometer shall be graduated for reading at the level of the
free horizontal surface of the liquid. 10

Description

2. (1) A hydrometer shall consist of a cylindrical body

(a) the bottom of which shall be constructed, in either a cone or
hemispherical shape, so as to prevent effectively the entrapment of
air bubbles; and 15

(b) the upper part of which shall be fused to a hollow cylindrical
stem, the top of which stem shall be sealed.

(2) The entire external surface of a hydrometer shall be symmetrical
about its vertical axis.

(3) The loading material for adjusting the mass of a hydrometer shall 20
be fixed in the bottom of the hydrometer.

(4) There shall be no loose material in any part of a hydrometer.

Scale

3. (1) The stem of a hydrometer shall contain a graduated scale,
marked on a strip of material, which shall be securely fastened to the 25
interior of the stem.

(2) Datum marks shall be provided on the scale strip and on the glass
stem so that any displacement of the scale strip will be readily apparent.

(3) A hydrometer shall not have more than one scale.

(4) The nominal range of a hydrometer shall be 20 kg/m³.

(5) The scale of a hydrometer shall be graduated in units of 0.2 kg/m³.

Density and Surface Tension

4. The following values of density at 20°C shall correspond to the surface tension values at 20°C of ethyl alcohol and water solutions:

Density at 20°C	Surface Tension at 20°C	Density at 20°C	Surface Tension at 20°C	
kg/m ³	mN/m	kg/m ³	mN/m	
780	21.1	900	27.5	10
786	22.3	906	27.8	
790	22.4	910	28.0	
794	22.7	914	28.2	
800	22.9	920	28.6	
806	23.2	926	29.0	15
810	23.4	930	29.4	
814	23.5	934	29.8	
820	23.8	940	30.4	
826	24.1	946	31.3	
830	24.3	950	32.1	20
834	24.4	954	32.9	
840	24.7	960	34.7	
846	25.0	966	37.1	
850	25.2	970	39.1	
854	25.3	974	41.7	25
860	25.6	980	46.2	
866	25.9	986	51.9	
870	26.1	990	56.5	
874	26.3	994	62.0	
880	26.5	1000	80.5	30
886	26.8			
890	27.0			
894	27.1			

Dimensions

5. (1) The total length of a hydrometer shall not exceed 300 mm.
- (2) The diameter of the cylindrical body shall not exceed 40 mm.
- (3) The volume below the lower nominal scale limit shall not exceed 125 mL.
- (4) The diameter of the stem shall be not less than 4 mm.

5

Accuracy and Testing

6. (1) Where the density of a liquid is measured by means of a hydrometer, the maximum permissible error shall be $\pm 0.2 \text{ kg/m}^3$.

(2) A hydrometer shall be used to determine the density of a liquid at the temperature of measurement with a maximum permissible error of $\pm 0.5^\circ\text{C}$.

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7. Where a hydrometer is examined for compliance with the specifications set out in section 6, at least three points evenly distributed over the nominal scale shall be tested.

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Inscription

8. A unique serial number shall be legibly and indelibly marked on the scale strip of every hydrometer.

SCHEDULE 4
(Sections 1, 3 and 4)

SPECIFICATIONS FOR PYCNOMETERS FOR ALCOHOL

General

1. (1) A pycnometer shall be a glass pycnometer that is designed to determine the mass of a liquid at 20°C. 5

(2) A pycnometer shall be of a nominal capacity of 25 or 50 mL.

Description

2. (1) A pycnometer shall consist of a bottle

(a) the bottom of which shall be flat; 10

(b) the upper part of which shall have an elongated neck; and

(c) the top of the elongated neck of which shall be closed with a removable, tightly fitted stopper.

(2) A pycnometer shall be constructed so as to prevent effectively the entrapment of air bubbles. 15

Reference Temperature

3. A pycnometer shall be calibrated and used to determine the mass of a liquid at the standard reference temperature of 20°C with a maximum permissible error of $\pm 0.05^\circ\text{C}$.

Accuracy 20

4. Where the mass of a liquid is determined by means of a pycnometer, the maximum permissible error shall be $\pm 0.0001 \text{ g/cm}^3$ at the standard reference temperature of 20°C.

Inscription

5. A unique serial number shall be legibly and indelibly marked on every pycnometer and on its stopper. 25

SCHEDULE 5
(Sections 1, 3 and 4)

SPECIFICATIONS FOR GLASS THERMOMETERS
FOR ALCOHOL

General

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1. (1) A glass thermometer shall be of the solid-stem type, graduated in accordance with the Celsius scale, as defined in the 1990 definition of the International Temperature Scale adopted by the Comité international des poids et mesures, and in accordance with the International System of Units.

10

(2) A glass thermometer shall be constructed in such a manner that the reading is correct when the glass thermometer is immersed at least to the end of the mercury column in the medium the temperature of which is being measured.

Glass

15

2. (1) A glass thermometer shall be made of suitable thermometric glass.

(2) The stress in the glass of the bulb and the stem of a glass thermometer shall have been reduced to a level sufficient to minimize the possibility of fracture owing to thermal or mechanical shock.

20

Liquid and Gas Filling

3. (1) Mercury, reagent grade, shall be used as the liquid filling of a glass thermometer.

(2) The space above the mercury shall be filled with a dry inert gas.

Construction

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4. A glass thermometer shall be straight and its external cross-section shall be approximately circular.

Scale

5. (1) The scale of a glass thermometer shall be marked so that it can easily be read through the wall of a glass jar that contains a liquid.

30

(2) A glass thermometer shall have the following characteristics:

- (a) it shall have a minimum range from -25°C to $+45^{\circ}\text{C}$; and
- (b) the smallest increment shall not be more than 0.5°C .

Accuracy and Testing

6. Where the temperature is measured by means of a glass thermometer, the maximum permissible error shall be $\pm 0.3^{\circ}\text{C}$ between -25°C and $+45^{\circ}\text{C}$. 5

7. Where a glass thermometer is examined for compliance with the specifications set out in section 6, the maximum permissible difference between errors of any two points which are 25°C apart shall not be more than 0.4°C . 10

Inscription

8. A unique serial number shall be legibly and indelibly marked on every glass thermometer.

SCHEDULE 6
(Sections 3 and 4)

SYMBOL TO BE SHOWN ON APPROVED HYDROMETERS
AND GLASS THERMOMETERS AND ON THE LABEL AFFIXED
TO APPROVED DIGITAL DENSITY METERS
AND DIGITAL THERMOMETERS

5



**REGULATIONS RESPECTING DENATURED AND
SPECIALLY DENATURED SPIRITS**

Method of Denaturing

1. (1) The prescribed specification for a prescribed grade of

(a) denatured spirits set out in Column I of an item of Schedule 1 is 5
the volume of spirits set out in Column II of that item and volume
of denaturants set out in Column III of that item; and

(b) specially denatured spirits set out in Column I of an item of
Schedule 2 is the volume of spirits set out in Column II of that item
and the volume of denaturants set out in Column III of that item. 10

(2) Where the volume of spirits to be denatured to a grade set out in
Column I of an item of Schedule 1 or 2 is greater or less than the
volume of spirits set out in Column II of that item, the volume of
denaturant used shall be in the same proportion to the volume of spirits
that the volume of the denaturants set out in Column III of that item of 15
Schedule 1 or 2 is to the volume of spirits set out in Column II of that
item.

2. An alcohol licensee who denatures spirits shall

(a) ensure the denaturant is a prescribed denaturant set out in
Schedule 3, and 20

(b) thoroughly mix the spirits and the denaturants.

Coming into Force

3. These regulations come into force < >.

SCHEDULE 1
(section 1)

DENATURED SPIRITS GRADES

Item	Column I Grade	Column II Spirits	Column III Denaturant
1.	DS-1	100 L of spirits	16 L of methyl alcohol and 5 1 L of methyl isobutyl ketone
2.	DS-2	100 L of spirits	16 L of methyl alcohol and 1 L of methyl ethyl ketone
3.	DS-3	100 L of spirits	16 L of methyl alcohol and 1 L of ethyl acetate
4.	DS-4	100 L of spirits	16 L of methyl alcohol and 1 L of acetone
5.	DS-5	100 L of spirits	16 L of methyl alcohol, 0.4 L of ethyl acetate and 0.5 L of methyl isobutyl ketone
6.	DS-6	100 L of spirits	16 L of methyl alcohol, 10 0.4 L of ethyl acetate, 0.2 L of methyl isobutyl ketone, 0.2 L of methyl ethyl ketone and 0.2 L of acetone
7.	DS-7	100 L of spirits	16 L of methyl alcohol, 0.4 L of ethyl acetate and 0.5 L of acetone
8.	DS-8	100 L of spirits	16 L of methyl alcohol, 0.4 L of ethyl acetate and 0.4 L of methyl isobutyl ketone
9.	DS-9	100 L of spirits	16 L of methyl alcohol, 0.4 L of ethyl acetate and 0.4 L of methyl ethyl ketone

Item	Column I Grade	Column II Spirits	Column III Denaturant
10.	DS-10	100 L of spirits	10 L of methyl alcohol and 0.6 L of methyl isobutyl ketone
11.	DS-11	100 L of spirits	10 L of methyl alcohol and 0.6 L of methyl ethyl ketone
12.	DS-12	100 L of spirits	10 L of methyl alcohol and 0.6 L of ethyl acetate
13.	DS-13	100 L of spirits	10 L of methyl alcohol and 0.8 L of acetone
14.	DS-14	100 L of spirits	10 L of methyl alcohol, 0.2 L of ethyl acetate and 0.3 L of methyl isobutyl ketone
15.	DS-15	100 L of spirits	10 L of methyl alcohol, 0.2 L of ethyl acetate and 0.3 L of methyl ethyl ketone
16.	DS-16	100 L of spirits	10 L of methyl alcohol, 0.2 L of ethyl acetate and 0.3 L of acetone
17.	DS-17	100 L of spirits	10 L of methyl alcohol, 0.2 L of ethyl acetate, 0.1 L of methyl isobutyl ketone, 0.1 L of methyl ethyl ketone and 0.1 L of acetone
18.	DS-18	100 L of spirits	10 L of methyl alcohol, 0.3 L of ethyl acetate, 0.3 L of methyl isobutyl ketone and 0.3 L of methyl ethyl ketone
19.	DS-19	100 L of spirits	10.5 L of methyl alcohol and 0.5 L of pine oil, N.F.

Item	Column I Grade	Column II Spirits	Column III Denaturant	
20.	DS-20	100 L of spirits	10 L of methyl alcohol and 1 L of petroleum naphtha	
21.	DS-21	100 L of spirits	6.5 L of methyl alcohol, 1 L of petroleum naphtha and sufficient colouring material added to ensure that the product will have a distinct colour	
22.	DS-22	100 L of spirits	10 L of methyl alcohol and 1 L of solvent naphtha	
23.	DS-23	100 L of spirits	1 L of gasoline	
24.	DS-24	100 L of spirits	1 L of diesel fuel	5
25.	DS-25	100 L of spirits	250 mL of diethyl phthalate, 700 mg of benzyldiethyl [(2, 6-xylylcarbamoyl) methyl] ammonium benzoate (Bitrex) and 40 g of camphor	
26.	DS-26	100 L of spirits	250 mL of diethyl phthalate, 175 g of sucrose octaacetate and 40 g of camphor.	
27.	DS-27	100 L of spirits	500 mL of toluene	
28.	DS-28	100 L of spirits	2 L of ethyl acetate and 2 L of toluene	
29.	DS-29	100 L of spirits	5 L of solvent naphtha	10
30.	DS-30	100 L of spirits	10 L of acetone	
31.	DS-31	100 L of spirits	5 L of ethyl acetate	
32.	DS-32	100 L of spirits	1,200 g of iodine and 1,200 g of potassium iodide	

Item	Column I Grade	Column II Spirits	Column III Denaturant
33.	DS-33	100 L of spirits	19.8 L of methyl alcohol, 0.6 L of methyl ethyl ketone and 0.2 L of ethyl acetate
34.	DS-34	100 L of spirits	9 L of methyl alcohol and 2 L of n-propyl acetate
35.	DS-35	100 L of spirits	4 L of methyl alcohol, 5 L of ethyl acetate and 1 L of heptane

The composition of these denatured spirits grades is stated in terms of spirits of a minimum strength of 95% absolute ethyl alcohol by volume, 5 unless otherwise specified.

SCHEDULE 2
(section 1)

SPECIALLY DENATURED SPIRITS GRADES

Item	Column I Grade	Column II Spirits	Column III Denaturant	
1.	SDS-1	100 L of spirits	5 L of methyl alcohol	5
2.	SDS-2	100 L of spirits	10 L of methyl alcohol	
3.	SDS-3	100 L of spirits	700 mg of benzyldiethyl [(2,6-xylylcarbamoyl) methyl] ammonium benzoate (Bitrex), or 175 g of sucrose octaacetate	
4.	SDS-4	100 L of spirits	4 L of methyl alcohol and 1 g of benzyldiethyl [(2,6-xylylcarbamoyl) methyl] ammonium benzoate (Bitrex), or 4 L of methyl alcohol and 250 g of sucrose octaacetate.	
5.	SDS-5	100 L of spirits	1 g of benzyldiethyl [(2,6-xylylcarbamoyl) methyl] ammonium benzoate (Bitrex) and 100 mL of tert-butyl alcohol, or 250 g of sucrose octaacetate and 100 mL of tert-butyl alcohol.	
6.	SDS-6	100 L of spirits	5 L of isopropyl alcohol	10
7.	SDS-7	100 L of spirits	10 L of formaldehyde solution	

Item	Column I Grade	Column II Spirits	Column III Denaturant
8.	SDS-8	100 L of spirits	1 L of ethyl acetate, or a quantity of vinegar or glacial acetic acid that constitutes a minimum of 6 g/L of acetic acid content in the specially denatured spirits
9.	SDS-9	100 L of spirits	5 L of chloroform
10.	SDS-10	100 L of spirits	4 L of nicotine sulphate solution and 800 mg of methylene blue.
11.	SDS-11	100 L of spirits	1 L of pine tar, N.F.
12.	SDS-12	100 L of spirits	13 kg of glycerin and 2,600 g of hard soap, N.F.
13.	SDS-13	100 L of spirits	1 L of ammonium hydroxide (aqua ammonia)

Item	Column I Grade	Column II Spirits	Column III Denaturant
14.	SDS-14	100 L of spirits	<p>1,300 g of any one, or a total of 1,300 g of two or more, of the following:</p> <p>anethole, N.F., anise oil, N.F., bay oil (myrcia oil), N.F., benzaldehyde, N.F., bergamot oil, N.F., bitter almond oil, N.F., camphor, cedar leaf oil, U.S.P., chlorothymol, N.F., cinnamic aldehyde, N.F., cinnamon oil, N.F., citronella oil, clove oil, N.F., coal tar, U.S.P., eucalyptol, N.F., eucalyptus oil, N.F., eugenol, U.S.P., guaiacol, N.F., lavender oil, N.F., menthol, U.S.P., methyl salicylate, N.F., mustard oil, U.S.P., peppermint oil, N.F., phenol, U.S.P., phenyl salicylate, N.F., pine needle oil, N.F., pine oil, N.F., rosemary oil, N.F., safrole, sassafras oil, N.F., spearmint oil, N.F., spike lavender oil, storax, U.S.P., thyme oil, N.F., thymol, N.F., tolu balsam, U.S.P., turpentine oil, N.F.</p>

Item	Column I Grade	Column II Spirits	Column III Denaturant
15.	SDS-15	100 L of spirits	<p>800 g boric acid, N.F., or of polysorbate 80, N.F., and 600 g of any one, or a total of 600 g of two or more, of the following:</p> <p>anethole, N.F., anise oil, N.F., bay oil (myrcia oil), N.F., benzaldehyde, N.F., bergamot oil, N.F., bitter almond oil, N.F. camphor, cedar leaf oil, U.S.P., chlorothymol, N.F., cinnamic aldehyde, N.F., cinnamon oil, N.F., citronella oil, clove oil, N.F., coal tar, U.S.P., eucalyptol, N.F., eucalyptus oil, N.F., eugenol, U.S.P., guaiacol, N.F., lavender oil, N.F., menthol, U.S.P., methyl salicylate, N.F., mustard oil, U.S.P., peppermint oil, N.F., phenol, U.S.P., phenyl salicylate, N.F., pine needle oil, N.F., pine oil, N.F., rosemary oil, N.F., safrole, sassafras oil, N.F., spearmint oil, N.F., spike lavender oil, storax, U.S.P., thyme oil, N.F., thymol, N.F., tolu balsam, U.S.P., turpentine oil, N.F.</p>

Item	Column I Grade	Column II Spirits	Column III Denaturant
16.	SDS-16	100 L of spirits	<p>23 g of potassium iodide and 32 g of red mercuric iodide, N.F., or</p> <p>27 g of thimerosal, U.S.P., or</p> <p>22 g of phenyl mercuric benzoate, of phenyl mercuric chloride, N.F., or of phenyl mercuric nitrate, N.F., or</p> <p>10 L of n-butyl alcohol.</p>
17.	SDS-17	100 L of spirits	39 kg of refined white or orange shellac, N.F.
18.	SDS-18	100 L of spirits	5 L of diethyl ether
19.	SDS-19	100 L of spirits	<p>800 mg of benzyldiethyl [(2, 6-xylylcarbamoyl) methyl] ammonium benzoate (Bitrex), 2 L of ethyl acetate and 100 g of camphor, or</p> <p>200 g of sucrose octaacetate, 2 L of ethyl acetate and 100 g of camphor.</p>

The composition of these specially denatured spirits grades is stated in 5
terms of spirits of a minimum strength of 95% absolute ethyl alcohol by
volume, unless otherwise specified.

SCHEDULE 3
(section 2)

DENATURANTS

1. **Acetone (2-propanone)** shall be a clear colourless volatile liquid with a minimum purity of 98 per cent by volume at 20°C. 5
2. **Ammonium hydroxide (aqua ammonia)** shall be a clear colourless aqueous solution of ammonia with a minimum concentration of ammonia of 27 per cent by mass.
3. **Benzyl-diethyl [(2,6-xylyl-carbamoyl) methyl] ammonium benzoate (Bitrex)** shall be a white crystalline powder with a minimum 10
purity of 97 per cent by mass.
4. **n-Butyl alcohol** shall be a clear colourless liquid with a minimum purity of 98 per cent by volume at 20°C.
5. **tert-Butyl alcohol** shall be a white crystalline solid with a 15
minimum purity of 98 per cent by mass.
6. **Camphor (1,7,7-trimethylbicyclo (2.2.1)-2-heptanone)** shall be a colourless or white crystalline solid, natural or synthetic, with a minimum purity of 98 per cent by mass.
7. **Chloroform** shall be a clear colourless volatile liquid with a 20
minimum purity of 97 per cent by volume at 20°C.
8. **Citronella oil** shall be a yellowish essential oil with a citrus-like odour and in which citronellal is the major component and having a refractive index between 1.468 and 1.487 at 20°C.
9. **Diethyl ether (ether)** shall be a clear colourless volatile liquid 25
with a minimum purity of 98 per cent by volume at 20°C.
10. **Diethyl phthalate** shall be a clear colourless liquid with a minimum purity of 98 per cent by volume at 20°C.
11. **Diesel fuel** shall be a clear liquid having the characteristic odour of diesel fuel and which meets the specifications set forth by the Standards Council of Canada for diesel fuels. 30
12. **Ethyl acetate** shall be a clear colourless liquid with a minimum purity of 98 per cent by volume at 20°C.

13. **Formaldehyde solution** shall be a clear colourless solution of formaldehyde with a minimum concentration of formaldehyde of 37 per cent by mass.

14. **Gasoline** shall be a volatile liquid having the characteristic odour of gasoline and which meets the specifications set forth by the Standards Council of Canada for gasolines. 5

15. **Glacial acetic acid** shall be a clear colourless liquid with a minimum purity of 99 per cent by volume at 20°C.

16. **Glycerin (glycerol)** shall be a clear colourless viscous liquid with a minimum purity of 98 per cent by volume at 20°C. 10

17. **Heptane** shall be a clear colourless volatile liquid with a minimum purity of 99 per cent by volume at 20°C.

18. **Iodine** shall be a bluish black solid with a metallic lustre, with a minimum purity of 98 per cent by mass.

19. **Isopropyl alcohol (isopropanol)** shall be a clear colourless volatile liquid with a minimum purity of 98 per cent by volume at 20°C. 15

20. **Methyl alcohol (methanol)** shall be a clear colourless volatile liquid with a minimum purity of 98 per cent by volume at 20°C.

21. **Methylene blue** shall be a dark green solid which produces a blue solution in alcohol, with a minimum purity of 95 per cent by mass. 20

22. **Methyl ethyl ketone (2-butanone)** shall be a clear colourless volatile liquid with a minimum purity of 98 per cent by volume at 20°C.

23. **Methyl isobutyl ketone (4-methyl-2-pentanone)** shall be a clear colourless liquid with a minimum purity of 98 per cent by volume at 20°C. 25

24. **Nicotine sulphate solution** shall be a solution in 95 per cent absolute ethyl alcohol by volume at 20°C, with a minimum concentration of nicotine sulphate of 5 per cent by mass.

25. **Petroleum naphtha** shall be a volatile highly flammable liquid having the characteristic odour of petroleum naphtha and which meets the specifications set forth by the Standards Council of Canada for naphtha fuels. 30

26. **Phenyl mercuric benzoate** shall be a solid with a minimum purity of 97 per cent by mass.

27. **Potassium iodide** shall be a white crystalline solid with a minimum purity of 98 per cent by mass.

28. ***n*-Propyl acetate** shall be a clear colourless liquid with a minimum purity of 98 per cent by volume at 20°C.

29. **Safrole (4-allyl-1,2 methylenedioxybenzene)** shall be a clear colourless or pale yellow liquid with a minimum purity of 98 per cent by volume at 20°C. 5

30. **Solvent naphtha** shall be a volatile highly flammable liquid having the characteristic odour of solvent naphtha and which upon distillation, a maximum of 5 per cent by volume shall pass over at or below 90°C, and a minimum of 90 per cent by volume shall pass over at or below 150°C. 10

31. **Spike lavender oil** shall be a yellowish viscous essential oil having the characteristic odour of spike lavender oil and a refractive index between 1.463 and 1.468 at 20°C. 15

32. **Sucrose octaacetate** shall be a white crystalline solid with a minimum purity of 97 per cent by mass.

33. **Toluene** shall be a clear colourless volatile liquid with a minimum purity of 98 per cent by volume at 20°C.

The following list of denaturants must meet the specifications set forth in the current United States Pharmacopoeia or National Formulary, or the latest volume of these publications in which the denaturant appeared as an official preparation: 20

Almond oil, bitter, N.F.	
Anethole, N.F.	25
Anise oil, N.F.	
Bay oil (myrcia oil), N.F.	
Benzaldehyde, N.F.	
Bergamot oil, N.F.	
Boric acid, N.F.	30
Cedar leaf oil, U.S.P.	
Chlorothymol, N.F.	
Cinnamic aldehyde, N.F.	
Cinnamon oil, N.F.	
Clove oil, N.F.	35
Coal tar, U.S.P.	
Eucalyptol, N.F.	
Eucalyptus oil, N.F.	
Eugenol, U.S.P.	
Guaiacol, N.F.	40

Hard soap, N.F.	
Lavender oil, N.F.	
Menthol, U.S.P.	
Mercuric iodide, red, N.F.	
Methyl salicylate, N.F.	5
Mustard oil, U.S.P.	
Peppermint oil, N.F.	
Phenol, U.S.P.	
Phenyl mercuric chloride, N.F.	
Phenyl mercuric nitrate, N.F.	10
Phenyl salicylate, N.F.	
Pine needle oil, dwarf, N.F.	
Pine oil, N.F.	
Pine tar, N.F.	
Polysorbate 80, N.F.	15
Rosemary oil, N.F.	
Sassafras oil, N.F.	
Shellac, N.F.	
Spearmint oil, N.F.	
Storax, U.S.P.	20
Thimerosal, U.S.P.	
Thyme oil, N.F.	
Thymol, N.F.	
Tolu balsam, U.S.P.	
Turpentine oil, N.F.	25

REGULATIONS RESPECTING LOSSES

Interpretation

1. The definitions in this section apply in these Regulations.

"Act" means the *Excise Act, 1999*; (*loi*)

"licensee" means a person to whom the Minister has issued a licence 5
under the Act; (*exploitant*)

"registrant" means a person to whom the Minister has issued a
registration under the Act; (*détenteur autorisé*)

Losses of Bulk Spirits

2. For the purposes of subparagraph 105(e)(i) of the Act, the 10
following circumstances are prescribed, on the condition that the person
responsible for the spirits at the time of the loss has records that
substantiate the loss, in accordance with section 186 of the Act:

(a) theft;

(b) losses through shrinkage by evaporation; 15

(c) losses through re-distillation, stock operations, vatting, blending,
racking, reducing, packaging and handling; or

(d) losses occurring during physical transfers between licensees and
registrants.

Losses of Packaged Alcohol

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3. For the purposes of paragraphs 115(1)(c) and 124(1)(c) of the Act,
breakage constitutes a prescribed circumstance, on condition that

(a) immediately prior to the breakage, the alcohol was packaged in
its original unopened container, and located in an excise warehouse
or in the premises of a licensed user; and 25

(b) the excise warehouse licensee or the licensed user who was in
possession of the packaged alcohol immediately prior to the breakage
has kept records that substantiate the breakage, in accordance with
section 186 of the Act.

Coming into Force

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4. These regulations come into force < >.

REGULATIONS RESPECTING RETURNING PACKAGED ALCOHOL TO AN EXCISE WAREHOUSE

Condition

1. For the purposes of sections 136 and 137 of the *Excise Act, 1999*, packaged alcohol that has been removed from the excise warehouse of an excise warehouse licensee may be re-entered into that warehouse as non-duty-paid alcohol if, at the time of the re-entry into the warehouse, it is packaged in the same unopened container in which it was packaged when it was removed from the warehouse. 5

Coming into Force

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2. These regulations come into force < >.

REGULATIONS RESPECTING THE MARKING OF SPECIAL CONTAINERS

Marking

1. The marking on a special container shall be

(a) legible;

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(b) clearly visible during normal handling; and

(c) capable of remaining in place until the alcohol in the special container is completely removed.

2. The marking on a special container of spirits shall indicate, in English and French, that

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(a) the contents of the container are packaged spirits; and

(b) the container is intended for delivery to, and use by, a registered user.

3. The marking on a special container of wine shall indicate, in English and French, that

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(a) the contents of the container are packaged wine; and

(b) the container is intended for delivery to, and use at, a bottle-your-own premises.

Coming into Force

4. These regulations come into force < >.

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REGULATIONS RESPECTING THE TRANSPORTATION OF NON-DUTY-PAID PACKAGED ALCOHOL

1. For the purposes of subparagraphs 85(2)(a)(iv), (c)(ii) and (d)(ii) of the *Excise Act, 1999*, a person may transport non-duty-paid packaged alcohol where the person

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(a) is a person authorized by an officer under section 19 of the *Customs Act* and is acting in accordance with that authorization; or

(b) has in their possession documentation acceptable to the Minister, that indicates that the person is transporting the alcohol on behalf of

(i) an excise warehouse licensee,

10

(ii) a licensed user,

(iii) a registered user,

(iv) a person licensed under the *Customs Act* to operate a duty free shop,

(v) a person, where the alcohol is designated as ships' stores 15
under the *Ships' Stores Regulations*, or

(vi) an accredited representative.

2. For the purposes of paragraph 85(3)(b) of the *Excise Act, 1999*, a person may transport a non-duty paid marked special container of alcohol where the person

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(a) is a person authorized by an officer under section 19 of the *Customs Act* and is acting in accordance with that authorization; or

(b) has in their possession documentation acceptable to the Minister, that indicates that the person is transporting special container on behalf of

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(i) an excise warehouse licensee, or

(ii) a registered user.

Coming into Force

3. These regulations come into force < >.

**REGULATIONS EXEMPTING CERTAIN TOBACCO
PRODUCTS FROM TOBACCO MARKING**

1. For the purposes of subsection 37(3) of the *Excise Act, 1999* any brand of tobacco product set out in Schedule 1 is a prescribed brand.
2. For the purposes of paragraph 37(4)(a) of the *Excise Act, 1999* 5 any cigarette of a brand set out in Schedule 2 is a prescribed cigarette.

Schedule 1
(section 1)

BRANDS OF TOBACCO PRODUCTS

Item	Brand	10
1.	Aspen	
2.	Bronco	
3.	Canadian	
4.	Canadian Natural	
5.	Dickens and Grant	15
6.	Doral	
7.	Dorchester	
8.	Gold Coast	
9.	Imperial Special Blend	
10.	Islands	20
11.	Magna	
12.	Marathon	
13.	Mercer	
14.	Monte Carlo	
15.	Montreal Blend	25
16.	Regular	
17.	River	

Schedule 2
(section 2)

BRANDS OF CIGARETTES

Item	Brand	30
1.	Canadian Gold	
2.	Old Port	
3.	Vantage	

REGULATIONS EXEMPTING CERTAIN TOBACCO PRODUCTS FROM SPECIAL DUTY

1. For the purposes of subsection 53(1) of the *Excise Act, 1999*, any tobacco product, except cigars, of a brand set out in Schedule 1 is a prescribed tobacco product.

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2. For the purposes of subsection 53(2) of the *Excise Act, 1999*, any cigarette of a type or formulation not sold in Canada and exported under a brand set out in Schedule 2 is a prescribed cigarette.

3. These regulations come into force < >.

Schedule 1 (section 1)

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BRANDS OF TOBACCO PRODUCTS

Item	Brand	
1.	Aspen	
2.	Bronco	15
3.	Canadian	
4.	Canadian Natural	
5.	Dickens and Grant	
6.	Doral	
7.	Dorchester	20
8.	Gold Coast	
9.	Imperial Special Blend	
10.	Islands	
11.	Magna	
12.	Marathon	25
13.	Mercer	
14.	Monte Carlo	
15.	Montreal Blend	
16.	Regular	
17.	River	30

Schedule 2
(*section 2*)

BRANDS OF CIGARETTES

Item	Brand
1.	Canadian Gold
2.	Old Port
3.	Vantage

REGULATIONS RESPECTING THE STAMPING AND MARKING OF TOBACCO PRODUCTS

Interpretation

1. The definitions in the section apply in these Regulations.

"Act" means the *Excise Act, 1999*; (*Loi*)

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"domestic duty free sale" means sale to a duty free shop, an accredited representative, and for use as ships' stores; (*vente au canada en franchise de droits*)

"manufacturer" means a manufacturer of tobacco products; (*fabricant*)

"package" means

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(a) in respect of raw leaf tobacco, the hand into which the tobacco is formed for sale or the package in which the hand or broken portions of the leaf are packed for sale, and

(b) in respect of tobacco products, the smallest package in which the tobacco products are normally offered for sale to the general public, including any outer wrapping that is customarily displayed to the consumer. (*paquet*)

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Information on Packages

2. (1) Every package containing tobacco products shall have shown thereon, in legible type, the name and address or the licence number of the manufacturer who packaged the tobacco products.

(2) Where a manufacturer packages tobacco products for another person, the identity and principal place of business of that other person may be shown on the package in lieu of the requirements of subsection (1).

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(3) Every box, crate or other container that contains a tobacco product shall show

(a) where the packages of the tobacco product are packed in cartons, the number of units in the container and the number of units in each package; and

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(b) in any other case, the weight of the tobacco product in a package and the number of packages in the container.

Specifications for Stamps and Marking

3. The stamps and markings set out in Schedules 1 to 5 must conform to the following specifications:

(a) all letters on the stamp or marking shall be a minimum of 1.6 mm in height; 5

(b) in the case of the tobacco stamp set out in Schedule 4,

(i) if the raw leaf tobacco is not further packaged than by being formed into a hand, the stamp shall be of sufficient length so that it can be interlaced and wrapped around the hand of tobacco, and

(ii) if the raw leaf tobacco is further packaged, the stamp on the package meets the requirements set out in paragraph (a); 10

(c) in the case of the tobacco marking set out in Schedule 5,

(i) if the marking is applied to a carton containing tobacco products

(A) the background colour of the marking shall be light blue, and 15

(B) two separate unilingual markings, one in English and one in French may be used instead of the bilingual marking; and

(ii) if the marking is applied to a box, crate or shipping container, the dimensions of the marking shall be 7cm by 19cm. 20

Tobacco Stamps

4. (1) A stamp set out in Part I or II of the applicable schedule shall be affixed to a package of a tobacco product, in a conspicuous place and in such a manner as to seal the package, as follows:

(a) in respect of packages of cigarettes, a tobacco stamp set out in Schedule 1; 25

(b) in respect of packages of cigars, a tobacco stamp set out in Schedule 2; and

(c) in respect of packages of manufactured tobacco other than cigarettes, a tobacco stamp set out in Schedule 3. 30

(2) The tobacco stamp set out in Schedule 4 shall be affixed in a conspicuous place to packages of raw leaf tobacco, and if the raw leaf

tobacco is further packaged than by being formed into a hand, the stamp shall be affixed in such a manner as to seal the package.

(3) The tobacco stamps referred to in any of Schedules 1 to 4 may be modified to include any additional information required by provincial Acts and regulations.

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Exemption from Stamping

5. (1) For the purposes of paragraphs 31(2)(h) and 34(2)(b) of the Act, the prescribed quantity of tobacco products is five units.

(2) For the purposes of subsection (1), a unit is

(a) 200 cigarettes;

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(b) 50 cigars;

(c) 400 tobacco sticks; or

(d) 400 grams of manufactured tobacco.

Tobacco Marking

6. For the purposes of subsection 37(1) of the Act,

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(a) the following information shall be printed on or affixed to, in a conspicuous manner, any container that contains tobacco products, other than cigars and smokeless tobacco,

(i) that is to be exported from Canada, the tobacco marking set out in Part I of Schedule 5, and

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(ii) that is to be supplied for domestic duty free sale, the tobacco marking set out in Part II of Schedule 5; and

(b) the words "not for sale in Canada" and "vente interdite au Canada" are prescribed information and shall be printed on or affixed to, in a conspicuous manner, any box, crate or shipping container that contains cigars or smokeless tobacco.

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7. For the purposes of subsection 37(2) of the Act,

(a) the tobacco markings set out in Part II of Schedule 5 shall be printed on or affixed to, in a conspicuous manner, any container that contains tobacco product, other than cigars and smokeless tobacco; and

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(b) the prescribed information referred to in paragraph 6(b) shall be printed on or affixed to, in a conspicuous manner, any shipping container that contains cigars or smokeless tobacco.

Coming into Force

8. These regulations come into force < >.

Schedule 1
(section 3, paragraph 4(1)(a))

TOBACCO STAMPS FOR PACKAGES OF CIGARETTES

PART I

CANADA
DUTY PAID DROIT ACQUITTE
CIGARETTES

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CIGARETTES
DROIT ACQUITTE
CANADA
DUTY PAID
CIGARETTES

10

PART II

CANADA DUTY PAID DROIT ACQUITTE

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Schedule 2
(section 3, paragraph 4(1)(b))

TOBACCO STAMPS FOR PACKAGES OF CIGARS

PART I

CIGARS - CIGARES

CANADA

DUTY PAID
DROIT ACQUITTÉ

5

PART II

CANADA DUTY PAID DROIT ACQUITTÉ	10
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Schedule 3
(section 3, paragraph 4(1)(c))

TOBACCO STAMPS FOR MANUFACTURED TOBACCO
(OTHER THAN CIGARETTES)

PART I

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DUTY PAID TOBACCO DROIT ACQUITTE	CANADA	DUTY PAID TABAC DROIT ACQUITTE
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DUTY PAID	TABAC CANADA TOBACCO	DROIT ACQUITTE
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CANADA
TABAC
TOBACCO
DROIT ACQUITTE DUTY PAID

15

PART II

CANADA DUTY PAID DROIT ACQUITTE

Schedule 4
(section 3, subsection 4(2))

TOBACCO STAMP FOR RAW LEAF TOBACCO

	CANADA DROIT ACQUITTE	TABAC CANADIEN EN FEUILLES	CANADIAN RAW LEAF TOBACCO	CANADA DUTY PAID	
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Schedule 5
(sections 6 and 7)

TOBACCO MARKINGS

PART I
EXPORT

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**NOT FOR SALE
VENTE INTERDITE
IN/AU CANADA**

PART II
DOMESTIC DUTY FREE SALE

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**DUTY NOT PAID
- CANADA -
DROIT NON
ACQUITTE**

REGULATIONS RESPECTING THE TRANSPORTATION OF TOBACCO PRODUCTS THAT ARE NOT STAMPED

1. For the purposes of paragraph 31(2)(d) of the *Excise Act, 1999*, a person may transport tobacco products that are not stamped where the person

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(a) is a person authorized by an officer under section 19 of the *Customs Act* and is acting in accordance with that authorization ;

(b) has in their possession documentation acceptable to the Minister, that indicates that the person is transporting the tobacco products on behalf of

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(i) a tobacco licensee,

(ii) an excise warehouse licensee,

(iii) a special excise warehouse licensee,

(iv) a person licensed under the *Customs Act* to operate a duty free shop,

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(v) a person, where the tobacco products are designated as ships' stores under the *Ships' Stores Regulations*, or

(vi) an accredited representative.

Coming into Force

2. These regulations come into force < >.

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